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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1938

## No. 231

THE ALTON RAILROAD COMPANY, APPELLANT,

*vs.*

ILLINOIS COMMERCE COMMISSION, MOULDING-BROWNELL CORPORATION, AND E. HELDMAIER, INC., ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

FILED JULY 29, 1938.

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1938

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## THE ALTON RAILROAD COMPANY, APPELLANT,

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APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

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IN THE

# SUPREME COURT OF ILLINOIS

FEBRUARY TERM, A. D. 1938

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|---|---|
| THE ALTON RAILROAD COMPANY, Appellant, vs. ILLINOIS COMMERCE COMMISSION, ex rel. MOULDING-BROWNELL CORPORATION, et al., Appellees. | Appeal from Circuit Court, Cook County. Honorable George W. Bristow, Trial Judge. |

## Abstract of Record.

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1 Placita.

3 Copy of notice of appeal to the Circuit Court of Cook County by The Alton Railroad Company from order made by the Illinois Commerce Commission on March 24, 1937, in its dockets 24391 and 22201; filed April 14, 1937, in the Circuit Court of Cook County, Number 37C-4220, and bearing acknowledgment of service upon the Secretary of Illinois Commerce Commission on April 13, 1937.

6 Copy of order made by Illinois Commerce Commission on March 24, 1937, in its dockets 24391 and

22201, filed in Circuit Court of Cook County on April 16, 1937. Order is as follows:

## STATE OF ILLINOIS

## ILLINOIS COMMERCE COMMISSION

| | | |
|---|---|---|
| In the matter of the petition of The Alton Railroad Company for an order authorizing the abandonment and discontinuance of service by it over a switch track serving various industries in Chicago, Illinois. | 24391 | Consolidated |
| Moulding-Brownell Corporation<br>*vs.*<br>The Alton Railroad Company | | |
| In the matter of application by complainant seeking maintenance of just, reasonable and non-discriminatory rates and transportation service on commodities moving from its plant in the Chicago switching district to various points in Illinois. | 22201 | |

ORDER.

By the Commission:

These proceedings which are herein consolidated for the purpose of order both have to do with a controversy concerning the status of a certain spur

track in Chicago, and especially with reference to the question of who shall pay for the maintenance and repair of the said track and who shall pay certain fees or charges imposed by an ordinance of the City of Chicago as compensation to the City for the right to maintain the said track across certain streets and alleys in that city.

Case 22201 arose upon a complaint filed with the Commission on January 10, 1933, by Moulding-Brownell Corporation, one of the industries served over said spur track. Thereafter, on February 13, 1934, by leave of the Commission, an amended complaint was filed in case 22201 by Moulding-Brownell Corporation and E. Heldmaier, Inc., another one of the industries served over said spur track, praying that after due hearing and investigation by the Commission, an order be made commanding The
7 Alton Railroad Company (hereinafter called "the Alton") not to permit said track to be abandoned and its right to operate over it to be forfeited, and requiring the Alton to maintain and keep in force, for the future, transportation service for the movement of carload freight between the plants of the complainants and points in Illinois under such conditions and at such rates and charges as the Commission may deem just, reasonable and non-discriminatory, and on file with the Commission, and that such other and further order or orders be made as the Commission may deem proper in the premises.

Several hearings were had from time to time in Case 22201, and although the case was marked heard and taken on February 28, 1935, no findings of fact had been made and no order had been entered by

the Commission when a petition was filed by the Alton on March 11, 1936, in Case 24391 praying that an order be entered by the Commission determining that the industries located on and served by said track should pay all future costs of maintaining said track in so far as it is not located on the right of way of the Alton and is not owned by it, and all license and other fees assessed under ordinance or otherwise because of the occupancy of public streets and alleys by the said track; that in default of such payments by said industries the Alton be authorized to discontinue the rendering of service to said industries over said track; that in default of such payments by said industries, the Alton be further authorized to cancel the rates applicable on traffic to or from said industries and handled over said track by the Alton, upon short notice to be determined by the Commission, and that such other and further order or orders be made as may be proper.

At the time set for the hearing of Case 24391, and before any evidence had been offered, a motion was made by the Alton to consolidate the two cases, which motion was taken with the case, and for the
8 purposes of the hearing the two cases were treated as consolidated. Since the matters in controversy are the same in each case, the motion to consolidate the two cases should be allowed and the two cases disposed of by a single order.

After due hearings pursuant to notice as required by law and by the rules and regulations of the Commission at which the petitioner and each of the respondents in Case 24391 were represented, that case was marked heard and taken and subsequently

briefs were filed by the Alton, The Peoples Gas Light and Coke Company, (hereinafter called "the Gas Company"), the Moulding-Brownell Corporation and E. Heldmaier, Inc., also sometimes referred to in these proceedings as the Heldmaier Stone Company. A written statement was also filed by the Commonwealth Edison Company, named as a respondent in Case 24391, to the effect that no transportation service is rendered or is likely to be rendered to the Commonwealth Edison Company over the track in question, and claiming compensation for the use of its lands now occupied by said track.

On October 29, 1936, the Commission made and entered of record an order (1) consolidating, for the purpose of consideration and disposition by order, docket cases 22201 and 24391; (2) dismissing the petition in docket case 22201 filed by the Moulding-Brownell Corporation on January 10, 1933, and the petition or complaint of the Alton filed in docket case 24391 on March 11, 1936; (3) denying authority to abandon the track involved in this proceeding and in the said petitioners (petitions) and in said order more specifically described, and authority to discontinue the rendering of railroad service by means thereof; (4) ordering the Alton to continue the maintenance and operation of the aforesaid track and the rendering of railroad transportation service to the industries located adjacent thereto and to all of the public who may now or hereafter be reasonably entitled to such transportation service; and (5) retaining jurisdiction of the subject matter of this proceeding and of the parties hereto for the purpose of taking any further action with reference to the matters here involved as may at any time appear reasonable or necessary.

Thereafter, on December 9, 1936, the Commission, in conference, granted the petition of the Alton for rehearing of the consolidated Cases 22201 and 24391, and the Gas Company filed a reply to the petition for rehearing. Thereafter further hearings were had in the consolidated cases, at which evidence was offered by the Alton, after which oral arguments were heard by the Commission, and the cases were again taken for consideration and disposition by the Commission.

There is no controversy over the material facts in the two cases. The uncontradicted evidence in the case shows that the track in question was constructed by or at the cost and expense of owners of lands on which the track is laid, and that, except at its connection with the main track of the Alton and for a distance of 150 feet therefrom, it was constructed on lands not owned by the Alton or by any of its predecessors in interest. However, it crosses public streets and alleys in the City of Chicago and is, and has been for more than fifty years, connected with the main track of the railroad now owned by the Alton, and the Alton and its predecessors in interest have served industries over said spur track at least since 1904 and apparently since 1885.

The relief sought by the complainants in Case 22201 was based upon the alleged facts that certain plants of the Moulding-Brownell Corporation and E. Heldmaier, Inc., are served by the Alton over the spur track in question; that said track crosses certain public streets and alleys in the City of Chicago by authority of an ordinance of the City of Chicago which provides that if default be made in the payment of any of the installments of compensation, the

privileges thereby granted may be immediately revoked by the Mayor or the ordinance revoked by the City Council; that the Alton had, under date of November 4, 1932, notified the complainants and other shippers and receivers of freight that unless they would agree to reimburse the Alton for payments already made and to be made by it to the City of Chicago for the right to occupy said streets and highways with said spur track under said ordinance, the Alton would refuse to make further payments to the City of Chicago under the terms of said ordinance, thereby forfeiting its right to operate over said track and making it impossible for the complainants and other industries served by said track to ship and receive carload freight; that said track is also used to serve the plants of the Gas Company and Commonwealth Edison Company with carload freight; that the Moulding-Brownell Corporation has invested in its plant served by said track $350,000 and E. Heldmaier, Inc., has invested in its plant served by said track $50,000, and that the abandonment of said track by the Alton would necessitate the closing down of those plants, rendering the same of no use or value.

The petition filed by the Alton in Case 24391 alleges, in substance, that for many years the petitioner has been rendering rail service to various industries by operation over the spur track in question; that a portion of said track was originally constructed about 1866 or 1868, at grade, upon property belonging to others than petitioner, and crossing various public streets and alleys; that since then various extensions of said track have been constructed in accordance with contracts under which all or most of the cost of such extensions have

been paid and borne by one or another of the industries served by said track; that the industries now served by petitioner over said track are the
11 Commonwealth Edison Company, Heldmaier Stone Company, Moulding-Brownell Corporation and the Gas Company; that in 1900 an ordinance was passed by the City Council of the City of Chicago requiring The Chicago & Alton Railroad Company, the predecessor in interest of petitioner, to elevate its tracks within the City of Chicago; that in 1903 another ordinance was passed requiring it to elevate part of the spur track in question, and imposing a license fee of $300.00 per year for the privilege of maintaining said track across said streets and alleys; that thereafter said track was elevated in part, in accordance with the requirements of said 1903 ordinance; that on November 1, 1904, The Chicago & Alton Railroad Company and The Chicago & Alton Railway Company, another predecessor in interest of petitioner, in pursuance of a contract dated November 1, 1904, between the said Railway Company, the Gas Company and the Commonwealth Electric Company, the predecessor of Commonwealth Edison Company, assigned to the Electric Company and the Gas Company all their rights under said ordinance of 1903; that in said contract The Chicago & Alton Railway Company, its successors and assigns, acquired the right to operate over said track for the purpose of serving industries located thereon, agreeing to maintain, renew, replace and repair said track, and said industries agreed to and did pay the cost of elevating said track and also agreed to and did pay the license fee of $300 per year imposed by said ordinance of 1903; that said ordinance of 1903 expired in 1923; that thereafter a dispute arose

between The Chicago & Alton Railroad Company and its receivers then operating its properties, on the one hand, and the industries then served by said track, on the other hand, as to the basis upon which service should be given in the future over said track, the said Railroad Company and said receivers insisting that the cost of maintaining said spur track and all license fees charged by the City
12 of Chicago should be paid by the industries; that in 1924 another ordinance was passed by the City Council of the City of Chicago authorizing the said Railroad Company to continue to maintain and use said spur track across the public streets and alleys which it had theretofore crossed, but imposing a license fee of $1,400 per year for that privilege and requiring the posting of a bond for $10,000 conditioned upon the observance of all provisions of said ordinance; that negotiations looking to a settlement of said dispute had been unsuccessful, but that upon the passage of said ordinance the said Railroad Company filed an acceptance thereof upon a verbal understanding that the matters in dispute would be satisfactorily adjusted; that on May 9, 1934, another ordinance was passed by the City Council of the City of Chicago, reducing to $700 per year the license fee imposed by said ordinance of 1924; that since the passage of said ordinance of 1924, representatives of The Chicago & Alton Railroad Company and of the petitioner have had lengthy negotiations with representatives of the industries located on and served by said track in an effort to agree upon a basis of payment of the license fees imposed by said ordinances of 1924 and 1934, and the cost of maintaining and repairing said track, but all such efforts have been unsuccessful; that the petitioner

and its predecessors in interest have been compelled to and have paid to the City of Chicago the license fees imposed by said ordinances of 1924 and 1934 for all years up to November 1, 1936, have maintained said spur track and have kept on file the $10,000 bond required by said 1924 ordinance; that petitioner is the purchaser at judicial sale of all the railways and properties formerly owned and/or operated by The Chicago & Alton Railway Company, The Chicago & Alton Railroad Company, and the receivers of the properties of The Chicago & Alton Railroad Company, who were appointed as such receivers by the District Court of the United
13 States for the Northern District of Illinois, Eastern Division, and that since July 18, 1931, petitioner has been, and now is, in possession of and operating all of said properties; that under the decree of foreclosure and sale under which petitioner acquired said properties, petitioner was given the right to elect not to assume or adopt any contract made or assumed by The Chicago & Alton Railroad Company or any of its predecessors, which right of election expires on July 18, 1936; that pursuant to the right so given, or in accordance with the provisions of contracts now in effect, petitioner has cancelled or will cancel, and has elected or will elect not to assume, any of the contracts relating to said track, in which any obligation is imposed upon petitioner to pay for the maintenance and upkeep of said track, and that petitioner will also cancel the bond for $10,000 required by said ordinance to be posted with the City of Chicago; the result of which, as claimed by petitioner in its petition, will be that petitioner will be under no obligation to pay future maintenance or repair charges upon said track

which will soon render the track unsafe for operation and it will be physically impossible for petitioner to operate thereover, and there will be no authority to maintain and operate said track across public streets and alleys in the City of Chicago and petitioner will be unable to operate thereover; that petitioner does not own any of the real property upon which said track is constructed except that property within its regular right of way lines immediately adjacent to its main line, and that all of the real property upon which said track is constructed, except as hereinabove stated, is owned by one or more of the industries served by said spur track or lies within public streets and alleys in the City of Chicago; and that the uniform practice of petitioner in rendering service upon switch, spur or side tracks serving industries upon its lines, in all cases where such tracks extend beyond the right
14 of way of petitioner, is to require that all license fees and all maintenance, repair and other charges necessary to keep such tracks in good condition and safe for operation, be paid by the industry or industries served by such tracks.

In its petition the petitioner alleged, as matters of law from the facts alleged in the petition and hereinabove set forth, that there is no legal or other obligations upon it to continue to pay for the maintenance and repair of said spur track in such condition as will enable it to operate its engines thereon, and that there is no legal or other obligation upon it to pay to the City of Chicago or to any one else any license or other fees because of the occupancy of public streets and alleys by said track, and that if the industries now located upon and served by

said track desire the continuance of service thereon, it is their duty and obligation to maintain said track and pay whatever license or other fees are due and payable because of the occupancy of public streets and alleys thereby; and that any requirement that petitioner continue to pay the maintenance, license or other fees required to be paid in connection with the future operation and maintenance of said track will create a discrimination in favor of the industries served by said track and against other industries in Illinois served by petitioner over other and similar switch, spur or side tracks.

By its petition, The Alton Railroad Company offered to continue to furnish service to the industries now or hereafter located upon the track in question if said industries will undertake to maintain said track in so far as it is not located upon the property of the petitioner and is not now owned by it, in proper condition so that operation thereon will be safe, and will pay such license or other charges as must be paid in order to maintain said track in its present location.

None of the interested parties filed any answer
15 to the petition of the Alton or otherwise denied the allegations of fact contained in the petition, except that the Commonwealth Edison Company denied that any service is or has been furnished by the Alton to it over said track, and the evidence offered by the Alton at the hearing in Case 24391 sustained the allegations of fact contained in its petition, with the exception above noted. For the purpose of this order it will therefore be assumed that the facts in the consolidated cases are as alleged in the petition of the Alton in Case 24391, with the excep-

tion above noted. Additional facts established by the evidence offered by the Alton at the hearing of Case 24391 are that the main line of the Alton, at and near its connection with the spur track in question, runs approximately east and west; that the track in question branches off the main line at Stark Street in Chicago, swings around to the north across Mary and Hillock Streets and then extends in a northwesterly and westerly direction north of and parallel to Cologne Street into premises owned by the Gas Company, west of Loomis Street, on which is located a gas manufacturing plant of the Gas Company; that the length of the spur track from its connection with the main line of the Alton to the west side of Loomis Street is 2831 feet, which is the only part of the track concerning which there is any controversy over the question of maintenance and repair, as that portion of the track located on the premises of the Gas Company lying west of Loomis Street has always been maintained at the expense of the Gas Company; that five industrial spur tracks branch off the track in question to plants of the Moulding-Brownell Corporation and of E. Heldmaier, Inc., and to another plant of the Gas Company lying east of Loomis Street; that since November 1, 1904, the Alton and its predecessors in interest have borne all cost of maintaining the spur track from its connection with the main line
16 to the west side of Loomis Street pursuant to the terms of the contract dated November 1, 1904, referred to in the Alton's petition, between one of the predecessors of the Alton, the Gas Company and the Commonwealth Electric Company, which contract was terminated on March 26, 1936, by the Alton filing in the District Court of the United States at

Chicago its election not to assume the contract; that the respective industries have always borne the cost of maintaining the industrial spur tracks which branch off the track in question and serve the respective plants of said industries; that the Gas Company and the Commonwealth Electric Company paid the whole cost of elevating the track in question in 1904, amounting to $37,000; that at least since 1928 the Alton and its predecessors have been paying taxes on said track, but the Alton has now ceased such tax payments because it does not own the track; that the Alton has not been able to ascertain when the track in question was constructed, but the earliest maps in its files show that it was constructed at least as far back as July, 1884, and those maps show that the track was then privately owned, but the Alton has no knowledge as to who actually constructed the track in the first instance.

After the rehearing had been granted, the Alton offered further evidence showing that it had not paid the $700 license fee to the City of Chicago, due November 1, 1936, and that the bond required by the ordinance to be posted with the City has been cancelled; also showing that the track in question is in bad condition and is in need of relaying of the rails; that it is laid with 80-pound rails, but as the Alton does not carry 80-pound rails in stock, if the Alton is required to relay the track, it will be relaid with 90-pound rails; that the reason for the use of the heavier weight of rails by the railroads is to eliminate danger and maintenance costs; that the trestle supporting the elevated portion of the track
17 is in need of rebuilding; that it is built of untreated timber, and the present practice of the Alton is to

rebuild with creosoted timber; that a portion of the track requires additional ballast, and the plank flooring which carries the ballast on the steel span across Hillock Street is decayed and needs immediate attention; and that the planking is now untreated timber and would be replaced with creosoted timber. The witness testifying to those facts stated that, under the rules and regulations of the Interstate Commerce Commission, if the track belonged to the Alton the additional cost of 90-pound rails over 80-pound rails and the additional cost of the creosoted timber over untreated timber and the cost of the ballast would all be chargeable to the capital account and would thereby be added to the value of the Alton's property upon which the Alton is entitled to a fair return.

The evidence further shows that the Alton has other spur tracks in Illinois of the same length of the track in question, with spurs leading off therefrom and serving industries, but the lead track in each instance is on property of The Alton Railroad Company and the Railroad Company owns those lead tracks.

From the foregoing it is apparent that the real controversy between the Alton, on the one hand, and the industries, on the other hand, is whether the Alton is obligated to maintain and keep in repair the track in question and pay to the City of Chicago whatever amounts, if any, must be paid as compensation for the crossing of streets and alleys by said track. The Alton does not contend that public convenience and necessity no longer require the operation of the track, nor does it contend that the operation over the track has resulted or will

result in any loss to it. On the contrary, the evidence shows that the track is indispensable to the operation of the plants of the Gas Company and the plants of the Moulding-Brownell Corporation and E. Heldmaier, Inc., and that the traffic handled
18 over the track in 1934 by the Alton amounted to about $40,000 according to the testimony of the Alton's own witness.

Under the law of this State, as established by numerous decisions of the Supreme Court, a railroad switch track, side track or spur track constructed in whole or in part on or across public streets or highways and connected with the main line of a railroad becomes a part of that railroad, and therefore a public highway in the sense that term is used in the Constitution of this State, whether constructed by the company owning or operating such main line of railroad or by the owner of an industry served by such switch track, side track or spur track or at the joint expense of the railroad company and such owner, and the railroad company is subjected to the same duty to use such switch track, side track or spur track for the convenience and benefit of the public as any part of its main track. Such being the established law of this State, in the opinion of the Commission, it necessarily and inevitably follows that the company owning or operating the main line of railroad with which such switch track, side track or spur track is connected is obligated to maintain and keep in repair the switch track, side track or spur track, and that obligation is in no way affected by the fact that the railroad company, in maintaining and repairing the track, may choose to replace the existing rails, timbers

or other materials with more expensive rails, timbers or materials, whereby, if it owned the track, it would be entitled, under the rules and regulations of the Interstate Commerce Commission, to charge the additional cost to its capital account.

The track in question crosses several streets and alleys and is, and has been for more than thirty years, connected with the main track of the rail-
19 road now owned by the Alton. It is therefore a part of the railroad now owned by the Alton and is a public highway open to public use. Its use is not limited to the industries which are now served by the industrial spur tracks which branch off therefrom, but any member of the public who can be served thereby is entitled to such service. It would therefore seem most inequitable and unjust to require the industries served by the existing industrial spur tracks to pay the cost of maintaining and keeping in repair the track in question or to pay any license fees exacted by the City of Chicago on account of the track in question crossing public streets and highways.

The track in question is not the ordinary switch track or spur track constructed or maintained by the Alton or its predecessors under the form of agreement offered in evidence by the Alton and referred to by its principal witness as the standard form of switch agreement. That form of agreement requires the industry to maintain the track. The witness, however, testified that he knew of no case where the Alton had occasion to build a track under an agreement to serve two industries. The same witness testified that the Alton has other spur tracks in Illinois of the same length and with indus-

trial spur tracks leading off therefrom and serving more than one industry, and he specifically mentioned five such tracks located in the State of Illinois, but it developed upon cross-examination that all of those spur tracks are on property of the Alton and that the Alton owns and maintains those tracks. The witness referred to those tracks as switching leads to the industries served over those tracks. The same witness referred to the track in question as "the main lead" and it is referred to in one of the records produced by the Alton from its files as the "Cologne St. main track." It seems apparent that the track in question is comparable, so far as its use and purpose is concerned, to the five switching leads referred to by the Alton's witness and which are maintained by the Alton. The contention of the Alton that the continued maintenance by it of the track in question will cause an unlawful discrimination is, in the opinion of the Commission, wholly without merit.

The prayers with reference to changing existing rates and charges for transportation of freight to and from the industries served over the track in question are so interwoven with and dependent upon the prayers for the other relief sought, that a disposition of the principal question of the obligation of the Alton to maintain the track in question and continue to furnish service to the industries also disposes of any question concerning any change in existing rates and charges. Moreover no evidence was offered by any of the parties as to the reasonableness or unreasonableness of existing rates and charges for transportation of freight to and from the industries served over the track in question, and

therefore no findings can be made or order entered affecting such rates and charges.

As hereinabove stated, the track in question was in existence long prior to 1903 and crossed Stark Street, Mary Street and Hillock Street, as well as Throop Street and Loomis Street at grade. The evidence does not show whether or not any compensation was exacted by the City of Chicago for maintaining the track across those streets prior to November 2, 1903. However, on November 2, 1903, the City Council of the City of Chicago passed an ordinance requiring The Chicago & Alton Railroad Company to elevate that portion of the track extending from its connection with the main track of the Railroad Company on a descending grade to
21 a point terminating east of Throop Street, crossing Stark Street, Mary Street and Hillock Street upon suitable bridges, and imposed a charge of $300 per annum for the privileges granted by the ordinance for a period of twenty years. The so-called privileges granted by the ordinance of November 2, 1903, therefore expired on November 2, 1923. Thereafter on December 10, 1924, the City Council of the City of Chicago passed another ordinance purporting to grant permission and authority to The Chicago & Alton Railroad Company to maintain and use, as then constructed, the track in question over and across Stark Street, Mary Street, Hillock Street, Throop Street and Loomis Street, and across two public alleys, for a period of twenty years from and after November 2, 1923, unless said ordinance should be sooner modified, amended or repealed in accordance with the right reserved by the City to modify, amend or repeal the ordinance. The amount

required to be paid to the City as compensation for the privileges granted by the ordinance was fixed by the ordinance at $1,400 per annum, payable annually in advance, and the ordinance provides that if default shall be made in the payment of any of the installments of compensation therein provided for, the privileges therein granted may be immediately revoked by the Mayor or the ordinance may be repealed by the City Council. The ordinance also required the Railroad Company to execute a bond to the City of Chicago in the penal sum of $10,000, with sureties, conditioned upon the faithful observance and performance of the conditions and provisions of the ordinance and to indemnify the City against liabilities incurred by the City by reason of the authority thereby granted. By an ordinance passed May 9, 1934, the compensation thereafter to be paid to the City under the ordinance of December 10, 1924, was reduced to $700 per annum.

Before the fiiing of the complaint in Case 22201, the Alton served notice on the industries located
22 on and served by the track in question that unless they would agree to reimburse the Alton for payments already made and to be made by it to the City of Chicago for the right to occupy said streets and alleys with said track, the Alton would refuse to make further payments to the City of Chicago under the terms of said ordinance, which notice apparently precipitated the filing of that complaint, and since the entry of the order herein on October 29, 1936, the Alton has failed to make the annual payment to the City of Chicago which, under the terms of the ordinance, was payable November 2, 1936, and has cancelled the bond for $10,000 which it had therefore posted with the City.

Neither the evidence nor the arguments of the parties present the question of the right of the City of Chicago to impose the charge fixed by the ordinance of December 10, 1924, or the charge fixed by the ordinance of May 9, 1934, for maintaining the track across streets and alleys in that city. The charge was not prescribed by either ordinance as a condition to the granting of permission to extend the track across or above city streets, but was imposed as a charge for maintaining across or above city streets a track which was, and had been for many years, in existence and use by the Alton and its predecessors in interest. Whether or not the City of Chicago can enforce the payment of the charge prescribed by the ordinance is a legal question which may properly be left to the determination of the courts. Manifestly the City is without power to interrupt state and interstate commerce by physical interference with railroad operation over these long established crossings, and therefore the failure of the Alton to pay the annual amount imposed by the ordinance or to post with the City the bond mentioned in the ordinance cannot affect the authority and jurisdiction of the Commission to require the Alton to continue the maintenance and operation of the track in question and the rendering
23 of railroad transportation service over said track. If an action be brought by the City of Chicago in the courts to recover the annual amount imposed by the ordinance for the so-called privilege of maintaining the track across public streets and alleys, it will then be the function of the court to determine whether the Alton is in any way obligated to make such payment. The Commission, however, will retain jurisdiction for the purpose of taking further

action upon this point if that should prove to be necessary.

As hereinabove stated, the Commonwealth Edison Company, by a statement filed by it, claimed that, if the track is to be maintained, that company should receive reasonable compensation for the use of its property occupied by the track. The statement was not in the form of a petition, nor did it contain any prayer, that the Commission determine or award such compensation, nor was any evidence offered to show what compensation would be reasonable, and there is therefore nothing in these proceedings which requires the Commission to give any consideration to the question whether the Commonwealth Edison Company should receive compensation for the use of its property occupied by the track.

For the reasons above stated it is manifest that the prayer of the petition filed by the Alton that an order be entered by the Commission determining that the industries located on and served by the track in question should pay all future costs of maintaining said track in so far as it is not located on the right of way of the Alton and is not owned by it, and all license and other fees assessed under ordinance or otherwise because of the occupancy of public streets and alleys by the said track, cannot be granted, and it necessarily follows that the remainder of the prayer of the petition must be denied, and that the Commission will not, upon the grounds relied upon by the Alton in its petition in Case
24 24391, authorize the abandonment or discontinuance of said track or the interruption of transportation service thereon or the cancellation of the rates now on file with the Commission applicable on traf-

fic to or from said industries and handled over said track by the Alton.

It follows that the prayer of the application filed by Moulding-Brownell Corporation in Case 22201 that an order be made commanding the Alton not to permit said track to be abandoned, and requiring the Alton to maintain and keep in force transportation service for the movements of carload freight between the plant of Moulding-Brownell Corporation and points in Illinois, should be granted.

Inasmuch as additional evidence was offered by the Alton after its petition for rehearing was granted and the Commission has reconsidered all the evidence offered in both of the consolidated cases, and has heard additional argument by counsel for the respective parties, the Commission considers it advisable to rescind the order made and entered of record in the consolidated cases on October 28, 1936, and to make and enter a new order, although the general effect of the new order is the same as the order heretofore made and entered of record on October 28, 1936.

From a consideration of the complaint and amended complaint in docket case 22201 and of the petition in docket case 24391 and of the briefs and arguments of the respective parties, the Commission finds:

1. that the subject matter in both of said cases is a certain railroad spur track branching off the main track of The Alton Railroad Company at Stark Street, in Chicago, and swinging around to the north across Mary Street and Hillock Street, and then extending in a northwesterly and

westerly direction north of and parallel with Cologne Street, and across Throop Street and Loomis Street, into premises owned by The Peoples Gas Light and Coke Company, west of Loomis Street, on which premises is located a gas manufacturing plant of the Gas Company;

2. that the principal issues in each of said cases are whether The Alton Railroad Company is obligated to maintain and operate said spur track and to pay the fees and charges imposed by an ordinance of the City of Chicago as compensation for the right or privilege to maintain said track across said streets and certain alleys in that city; but that it is unnecessary for the Commission to decide the issue whether The Alton Railroad Company is obligated to pay the fees and charges imposed by said ordinance for the reasons hereinabove stated; and

3. that by reason of the foregoing and all matters of record, the Commission has jurisdiction of the subject matter of these proceedings and of the parties thereto.

And the Commission having considered all the evidence, both oral and documentary, finds therefrom:

(1) that The Alton Railroad Company (hereinafter referred to as "the Alton"), petitioner in Case 24391 and respondent in Case 22201, is a corporation engaged in the operation of a line of railroad as a common carrier in the State of Illinois and is the successor in interest to The Chicago & Alton Railroad Company and its receivers, and to The Chicago & Alton Railway Company;

(2) that the Alton and its said predecessors in interest, at least since 1904 and apparently since 1885, have furnished railroad transportation service over a certain spur track in the City of Chicago, in the State of Illinois, to industries adjacent to said track and in the vicinity thereof, which spur track now is, and during all of said period of time has been, connected with the main track of the railroad now owned by the Alton and crosses certain streets and alleys in said City, which streets are hereinafter referred to by name;

(3) that said spur track was constructed by or at the cost and expense of owners of lands on which the track is laid, and not at the cost or expense of the Alton or any of its predecessors in interest, and that, except at its connection with the main track of the railroad now owned by the Alton and for a distance of 150 feet therefrom, said spur track was constructed, and is now located, on lands not owned by the Alton;

(4) that said spur track, as originally constructed crossed Stark Street, Mary Street, Hillock Street, Throop Street (formerly Main Street) and Loomis Street (formerly Deering Street) at grade, but on November 2, 1903, the City Council of the City of Chicago passed an ordinance requiring The Chicago & Alton Railroad Company, one of the predecessors in in-
26 terest of the Alton, to elevate that portion of said spur track extending from its connection with the main track of said railroad company, on a descending grade, to a point on said spur track east of Throop Street, and requiring said spur track to cross Stark Street, Mary Street and

Hillock Street upon bridges to be built and installed by said railroad company, and said ordinance imposed a charge of $300 per annum, for a period of twenty years, for the privilege of maintaining said spur track across said street;

(5) that under date of November 1, 1904, The Chicago & Alton Railway Company and The Peoples Gas Light and Coke Company (herein sometimes referred to as "the Gas Company"), one of the industries served over said spur track, and the Commonwealth Electric Company, a predecessor of the Commonwealth Edison Company, one of the owners of lands on which said spur track was then laid, entered into an agreement by which the Gas Company and said Commonwealth Electric Company agreed to pay the entire cost of elevating said spur track in accordance with the requirements of said ordinance, and agreed that for and during the period of five years from and after January 1, 1905, and thereafter until terminated by one year's notice by any of the parties to said agreement, said railway company, to the exclusion of all other railroad companies, should be permitted to use and operate said spur track for the purpose of handling freight business of the Gas Company and of said Commonwealth Electric Company and of such other industries as may be located upon any lot or lots abutting upon said track; that said agreement further provided that during said period of five years, and so long thereafter as said railway company should be permitted to use and operate said spur track as aforesaid to the exclusion of all other railroad companies, said rail-

way company should maintain, renew, replace and repair said track and should bear and defray all expenses, costs and liabilities arising from the use and operation of the cars and engines over the same by said railway company, and that the Gas Company and said Commonwealth Electric Company should carry out and perform all the obligations of The Chicago & Alton Railroad Company and of said railway company under said ordinance including the obligation to make the annual payment to said City as required by said ordinance;

(6) that said spur track was elevated in accordance with the requirements of said ordinance, and the Gas company and/or said Commonwealth Electric Company paid the entire cost of such elevation, and, during the period said ordinance remained in effect, the predecessors of the Alton did, to the exclusion of all other railroad companies, use and operate said spur track for the purpose of handling freight business of the Gas
27 Company and of such other industries as were located upon lots abutting upon said track as desired railroad transportation service over said track, and did, during said period, maintain, renew, replace and repair said track, and the Gas Company, during said period, did reimburse the Alton for all annual payments made by the Alton to the City of Chicago required by said ordinance;

(7) that said ordinance of November 2, 1903, expired on November 2, 1923, and thereafter, on December 10, 1924, another ordinance was passed by the City Council of the City of Chicago purporting to grant permission and authority to said The

Chicago & Alton Railroad Company to maintain and use, as then constructed, said spur track over and across Stark Street, Mary Street, Hillock Street, Throop Street and Loomis Street and two public alleys in the City of Chicago for a period of twenty years from and after November 2, 1923, unless said ordinance should be sooner modified, amended or repealed in accordance with the right reserved by said City to modify, amend or repeal said ordinance, and fixing the amount to be paid to the City of Chicago as compensation for the privilege of maintaining said track across said streets and alleys at $1400 per annum, payable in advance, and providing that if default should be made in the payment of any of the installments of compensation therein provided for, the privileges therein granted may be immediately revoked by the Mayor of said City or the ordinance repealed by the City Council, and that said ordinance also required said railroad company to post with the City of Chicago a bond in the penal sum of $10,000, with sureties, conditioned upon the faithful observance and performance of the conditions and provisions of said ordinance and to indemnify the City against liabilities incurred by reason of the authority granted by said ordinance, which bond was posted with the City by said railroad company;

(8) that by ordinance passed May 9, 1934, the compensation thereafter to be paid to the City under said ordinance of December 10, 1924, was reduced to $700 per annum;

(9) that since the passage of the said ordinance of December 10, 1924, the Alton and its predeces-

sors in interest have continued to furnish railroad transportation service to the industries located adjacent to or capable of being served over said spur track, and have maintained said track, at their own expense, and up to November 2, 1936, paid all compensation required to be paid to said City by said ordinance and have not been reimbursed therefor except in the amount of $900 which was paid by the Gas Company to predecessors of the Alton, on account of the compensation paid to the City under said ordinance for the period from November 2, 1923, to November 2, 1925;

28 (10) that the Alton failed to make the payment due November 2, 1936, under the terms of said ordinance of December 10, 1924, as amended by said ordinance of May 9, 1934, and has cancelled the bond required by said ordinance of December 10, 1924, to be posted with the City of Chicago;

(11) that the Alton was the purchaser at judicial sale of all the railways and properties formerly owned and/or operated by The Chicago & Alton Railway Company, The Chicago & Alton Railroad Company, and the receivers of the properties of The Chicago & Alton Railroad Company who were appointed as such receivers by the District Court of the United States for the Northern District of Illinois, Eastern Division, and that since July 18, 1931, the Alton has been, and now is, in possession of and operating all of said properties; that under the decree of foreclosure and sale under which the Alton acquired said properties, the Alton was given the right to elect not to assume or adopt any contract made or assumed by The Chicago & Alton Railroad Company or any of its predecessors, and

that on March 26, 1936, the Alton filed in said District Court its election not to assume said contract dated November 1, 1904, between The Chicago & Alton Railway Company, the Gas Company and the Commonwealth Electric Company;

(12) that the industries now, and ever since the filing of the complaint in case 22201, served over said spur track are the Moulding-Brownell Corporation and E. Heldmaier, Inc., the complainants in Case 22201, and the Gas Company; that each of said industries is furnished railroad transportation service by means of industrial spur tracks, paid for by the respective industries, which branch off the spur track in question, except that a gas manufacturing plant of the Gas Company is furnished railroad transportation service by means of an extension of said spur track west of Throop Street, and no controversy exists in this case with reference to the maintenance, repair and renewal of the industrial spur tracks branching off from said spur track or of the extension of said spur track west of Throop Street into said gas manufacturing plant of the Gas Company, as the cost and expense of maintenance, repair and renewal of such industrial spur tracks and of said extension have always been borne by the industries served thereby;

(13) that the Gas Company, the Moulding-Brownell Corporation and E. Heldmaier, Inc., at their respective premises here under consideration, have no other means of railroad transportation service available, nor have they any railroad connection except by means of the spur track here under consideration;

(14) that the said spur track extends across property owned by the Commonwealth Edison Company, but said company is not, and has never been, furnished with railroad transportation service over said track;

29 (15) that the length of said spur track from its connection with the main line of the Alton to the west side of Loomis Street is 2831 feet;

(16) that said spur track is in bad condition and is in need of relaying of the rails; that it is laid with 80-pound rails, but the Alton does not carry 80-pound rails in stock and now uses 90-pound rails in relaying such tracks to eliminate danger and maintenance costs; that if the Alton owned the track, the cost of 80 pounds of the new rail would, under the rules of the Interstate Commerce Commission, be charged to maintenance and the additional 10 pounds to additions and betterments, meaning to capital account; that the trestle supporting the elevated portion of the track is in need of rebuilding; that it is built of untreated timber and the present practice of the Alton is to rebuild with creosoted timber, and that the cost of creosoted timber over untreated timber, if applied to a structure owned by the Alton, would be betterment and, under the rules of the Interstate Commerce Commission, chargeable to capital account; that a portion of the track requires additional ballast, the cost of which, if applied to a track owned by the Alton, would, under the rules of the Interstate Commerce Commission, be chargeable to capital account; that the plank flooring which carries the ballast on the steel span across Hillock Street is decayed and needs im-

mediate attention; that the planking is now untreated timber, and if replaced with creosoted timber, would involve a betterment and, under the rules of the Interstate Commerce Commission, would be chargeable to capital account if the structure belonged to the Alton;

(17) that the Alton has other spur tracks (known as lead tracks) in Illinois of the same length of the spur track here in question, with spurs leading off therefrom and serving industries, but the lead track in each instance, which serves the same purpose as the spur track here in question, is on property of the Alton and the Alton owns and maintains those lead tracks;

(18) that cases bearing Illinois Commerce Commission docket numbers 22201 and 24391 should be consolidated for the purpose of consideration and disposition by order;

(19) that by reason of the matters hereinbefore set forth the said spur track in question is a public track and part of the railroad facilities of The Alton Railroad Company;

(20) that authority to abandon the said spur track involved in this consolidated proceeding and in the said complaint and petition and in this order more specifically described, and for authority to discontinue the rendering of railroad transportation service by means thereof should be specifically denied;

(21) that The Alton Railroad Company should be specifically ordered and directed to continue the maintenance and operation of the aforesaid spur track and the rendering of railroad transportation service by means thereof to the industries now

served thereby and to such other industries and to all of the public who may now or hereafter be reasonably entitled to such transportation service over said track;

(22) that public convenience and necessity requires that the Alton continue the maintenance and operation of said spur track;

(23) that the order made and entered of record herein on October 28, 1936, should be rescinded; and

(24) that the Commission should retain jurisdiction of the subject matter of this consolidated proceeding and of the parties hereto for the purpose of taking any further action with reference to the matters here involved as may at any time appear reasonable or necessary.

It Is Therefore Ordered that docket cases 22201 and 24391 be, and they are, consolidated for the purpose of consideration and disposition by order.

It Is Further Ordered that authority to abandon the spur track involved in this proceeding and in the said complaint and petition and in this order more specifically described, and for authority to discontinue the rendering of railroad transportation service by means thereof, be, and it is hereby, specifically denied.

It Is Further Ordered that The Alton Railroad Company be, and it hereby is, specifically ordered to continue the maintenance and operation of the aforesaid spur track and the rendering of railroad transportation service by means thereof to the industries now served thereby and to such other industries and

to all of the public who may now or hereafter be reasonably entitled to such transportation service over said track.

IT IS FURTHER ORDERED that the order made and entered of record herein on October 28, 1936, be, and the same hereby is, rescinded.

31 IT IS FURTHER ORDERED that the Commission retain jurisdiction of the subject matter of this proceeding and of the parties hereto for the purpose of taking any further action with reference to the matters here involved as may at any time appear reasonable or necessary.

By order of the Commission at Chicago, Illinois, this 24th day of March, 1937.

(Signed) William W. Hart,
*Secretary.*

(Seal)

32 STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

CERTIFICATE

Re: 24391-22201—Consolidated

I, William W. Hart, do hereby certify that I am Secretary of the Illinois Commerce Commission of the State of Illinois and keeper of the records of said Commission.

I further certify that the above and foregoing is a true, correct and complete copy of order made and entered of record by said Commission on the 24th day of March, A. D. 1937.

Given under my hand and the seal of said Illinois Commerce Commission at Springfield, Illinois, this 31st day of March, A. D. 1937.

William W. Hart,
*Secretary.*

(Seal)

34 Appearance of C. B. Cardy and W. S. Garman, as attorneys for Moulding-Brownell Corporation, et al, filed April 27, 1937.

36 Appearance of Otto Kerner, Attorney General, and Harry R. Booth and W. Robert Ming, Jr., Assistant Attorneys General, as attorneys for Illinois Commerce Commission, filed April 28, 1937.

38 Record of proceedings before Illinois Commerce Commission filed May 3, 1937.

## RECORD BEFORE ILLINOIS COMMERCE COMMISSION

41 Complaint of Moulding-Brownell Corporation and E. Heldmaier, Inc., against The Alton Railroad Company, City of Chicago, Peoples Gas Light and Coke Company and Commonwealth Edison Company, filed with Illinois Commerce Commission in its docket 22201 on December 14, 1933.

52 Copy of complaint served on The Alton Railroad Company; case set for hearing March 2, 1933, and continued until March 30, 1933.

53 Stipulation to continue hearing of case from March 2, 1933, until March 30, 1933.

55 Stipulation to continue hearing of case from March 30, 1933, until May 2, 1933.

56 Hearing of case continued from March 30, 1933, until May 11, 1933.

57 Stipulation that hearing of case may be continued from May 11, 1933, until June 15, 1933.

58 Hearing of case continued from May 11, 1933, to June 15, 1933, and from June 15, 1933, to September 14, 1933.

59 Stipulation to continue hearing of case from June 15, 1933, to September 15, 1933.

61 Stipulation to continue hearing of case from September 14, 1933, to October 24, 1933.

62 Hearing of case continued from September 15, 1933, to October 24, 1933, and from October 24, 1933, to November 22, 1933.

63 Stipulation to continue hearing of case from October 24, 1933, to November 22, 1933.

65 Stipulation to continue hearing of case from November 22, 1933, to November 28, 1933.

66 Hearing of case continued from November 22, 1933, to November 28, 1933, and from November 28, 1933, to January 9, 1934, with leave to complainants to file amended complaint.

74 Copy of amended complaint by Moulding-Brownell Corporation and E. Heldmaier, Inc., against The Alton Railroad Company, City of Chicago, Peoples Gas Light & Coke Co. and Commonwealth Edison Co. filed December 14, 1933. Complaint alleges that
75 Moulding-Brownell Corporation is an Illinois corporation engaged in the production, sale and distribution of sand, graved, crushed stone, cement, coal and other commodities; that E. Heldmaier, Inc., is

an Illinois corporation, engaged in business as a retail cut-stone contractor; that both complainants ship and receive shipments of freight over the lines of The Alton Railroad Company, which is a common carrier for hire and subject to the provisions of the
76 Illinois Public Utilities Act; that the City of Chicago is a municipal corporation, and the Peoples Gas Light & Coke Company and the Commonwealth Edison Company are public service corporations, doing business in Chicago and operating plants therein and shipping and receiving freight over the lines of The Alton Railroad Company; that complainants operate plants in Chicago upon spur tracks extending from the main line of the railroad to the plants of the complainants, which spur tracks are owned, in whole or in part, by the Gas Company and the Edison Company, and are used and operated by the Railroad Company under leases or operating agree-
77 ments; that said tracks are laid across public streets under an ordinance of the City of Chicago which provides that if default be made in the payment of the compensation required by the ordinance, the privileges granted thereby may be revoked; that The Alton Railroad Company notified complainants on November 4, 1932, that unless it was reimbursed for payments made and to be made by it to the City of Chicago, it would refuse to make any such further payments, thereby forfeiting its right to operate over said tracks and making it impossible for complainants to ship and receive freight thereon, all contrary to the provisions of the Public Utilities Act; that the ordinance of the City of Chicago and the compensation reserved therein are unreasonable and excessive and contrary to law; that the Railroad Company lists
78 complainants as industries on its line in tariffs filed

by it; that in 1931 the Moulding-Brownell Corporation shipped and received 170 cars of freight over the lines of the Railroad Company and said spur tracks, and 1074 such cars in 1932; that the estimated revenue of the Alton on said shipments was $2,360 in 1931 and $18,540 in 1932; that said spur tracks are also used to serve the plants of the Gas Company and the Edison Company; that the investment of the Moulding-Brownell Company in its plant is $350,000 and that of E. Heldmaier, Inc., in its plant is $50,000,
79 and that the abandonment of service by the Railroad Company over said spur tracks would cause petitioners to lose their investment in these plants; that the threatened abandonment of rights by the Railroad Company is contrary to law, and that under the law, it is its duty to maintain said tracks and receive and deliver freight thereon; that jurisdiction of the
80 Illinois Commerce Commission over the matter is established by sections 8, 32, 51 and 58 of the Illinois Public Utilities Act; that the Commission should, after hearing, make an order commanding the Railroad Company not to permit said tracks to be abandoned and requiring the Railroad Company to continue transportation service thereon, between the plants of complainants and points in Illinois.

85 Hearing of case continued from January 9, 1934, to February 13, 1934.

89 Hearing of case continued from February 13, 1934, to March 13, 1934; and from March 13, 1934, to April 12, 1934.

90 Stipulation to continue hearing of case from March 13, 1934, to April 13, 1934.

92 Stipulation to continue hearing of case from April 12, 1934, to May 15, 1934.

93 Hearing of case continued from May 15, 1934, to June 13, 1934.

94 Stipulation to continue hearing of case from May 13, 1934, to June 13, 1934.

95 Hearing of case continued from June 13, 1934, to June 27, 1934, and from June 27, 1934, to July 11, 1934.

100 Hearing of case continued from July 11, 1934, to July 24, 1934.

106 Hearing of case continued from July 24, 1934, to September 25, 1934.

109 Hearing of case continued from September 25, 1934, to October 10, 1934.

112 Hearing of case continued from October 10, 1934, to November 15, 1934, and from November 15, 1934, to November 27, 1934.

115 Hearing of case continued from November 27, 1934, to December 13, 1934; from December 13, 1934, to January 16, 1935; from January 16, 1935, to January 30, 1935; and from January 30, 1935, to February 13, 1935.

119 Case called for hearing on February 27, 1935, and continued to February 28, 1935. Case heard on February 28, 1935.

120 Report of proceedings had February 28, 1935, on the hearing before the Illinois Commerce Commission in its Docket 22201, "Moulding-Brownell Company *et al, vs.* Alton Railroad Company, *et al.*"

Appearances, J. L. Hodgson and C. B. Cardy, for Complainant; Bryce L. Hamilton, for Respondent.

128 J. L. HODGSON, a witness for Moulding-Brownell Company, was sworn and testified as follows:

*Direct Examination.*

My name is J. L. Hodgson and I am Traffic Manager of the Moulding-Brownell Corporation. That Company handles building material and the production and sales distribution of sand, gravel, crushed stone, cement and other building materials, also coal. It has a material yard and dock facilities at what we call 26th and Illinois Streets on the south side of the Chicago River between Loomis and Throop
129 Streets. That plant has been operated by the Moulding-Brownell Company since 1930, and prior to then had been operated by the American Sand & Gravel Company since 1924. The American Sand & Gravel Company was one of several companies that merged into the Moulding-Brownell Corporation. I was
130 with the American Sand & Gravel Company for 23 years. Its investment in this yard was approximately $350,000. Sand, gravel, lime, plaster and coal is shipped in and out of the yard at the rate of from 5 to 15 cars a day. It is practically all inbound interstate and state traffic. Complainant's Exhibit 1
131 shows the number of shipments received at that yard during the years 1933 and 1934 upon which the Alton Railroad Company received revenue. (Document marked Complainant's Exhibit 1). The yard is located exclusively on the Alton Railroad. Page 4 of
132 the original complaint correctly shows the number of inbound shipments for 1931 and 1932. There has been an increase in the movement at that plant in the last few years. The estimated Alton revenue shown

on Exhibit 1 is mostly derived from switching business, but there is some road-haul business. I esti-
133 mated the amount from what I thought the division of rates would be. Complainant's Exhibit 2 is a map showing the location of this plant with reference to the tracks of the Railroad Company. (Document marked Complainant's Ex. 2). Complainant's Exhibit 3 shows the location of the tracks adjacent to the plant in more detail.

134 (Document marked Complainant's Ex. 3). On this exhibit the plant is shown half way between Loomis and Throop Streets, opposite the figures "No. 166", and is the 2 lots above the figures "No. 166." The plant is adjacent to and directly north of the spur track. Prior to the location of the plant
135 at that point I had negotiations with the Railroad Company with reference to the construction of the switch track. Complainant's Exhibit 4 is a copy of a switch track agreement made on April 5, 1924, between the American Sand & Gravel Company and the Chicago & Alton Railroad Company. (Docu-
136 ment marked Complainant's Ex. 4). I was in the employ of the American Sand & Gravel Company when this contract was made, and after it was made the Chicago & Alton Railroad Company constructed a spur track leading to the track in accordance with the agreement. The track was constructed immedi-
138 ately north of the spur track, into the plant. I do not know the length of the truck constructed, but it was long enough to receive carload shipments in and
141 out. The track designated as being in green and that designated as being in red in the contract appears from the language of the contract. I know this of my personal knowledge.

141a The track referred to as being shown in green
142 was the property of the Gravel Company and was constructed under the contract. It leads into the plant. The track referred to as shown in red is the
143 track with which the green track connects. I know
144 that of my own knowledge. I presume that the consideration mentioned in the contract was paid to the Chicago & Alton Railroad Company or its Receivers, as we had the track constructed and have been
145 operating it. I was then the Traffic Manager of the American Sand & Gravel Company, and am still handling the business of the Moulding-Brownell
146 Company. The track shown in red on this agreement is the continuous track extending beyond the plant both east and west. It is immediately above the "166" shown on the exhibit and is inside of the sidewalk. On May 9, 1934, the City Council of Chi-
147 cago passed an ordinance amending an ordinance passed on December 10, 1924, and reducing the charge to the Chicago & Alton Railroad Company
148 for maintaining switch tracks across certain streets and alleys from $1400 a year to $700 a year, and providing that the reduced payment was to be made for each year beginning November 2, 1932. The track
149 constructed under Exhibit 4 does not cross any streets or alleys and no industries besides the American Sand & Gravel Company are located upon it. The Heldmaier Stone Company, the other complainant, is located six or seven hundred feet east of us and is the next industry. Its business is that of cut stone contractors, but I have no knowledge as to the nature of its traffic. It is on and adjacent to the
149 same track that our company is on and is about 700 feet east of us. It is served by a switch track, or

spur, leading off of the track immediately south of the plant. I do not know the conditions under which the track leading into the Heldmaier plant was constructed.

*Cross Examination.*

150 The shipments shown in my exhibit were both state and interstate. On most of them the Alton got switch revenue, but I have no knowledge as to the basis of the division of revenue on those ship-
151 ments between the various carriers. The shipments shown on page 4 of the complaint were both state and interstate. The Alton participated in them principally as a switching carrier. I have no knowledge of the division of revenue on those shipments as between the Alton and the other carriers.

152 M. R. HOAGLAND, a witness on behalf of The Alton Railroad Company was sworn and testified:

*Direct Examination.*

My name is Milton R. Hoagland. I am Office Engineer for The Alton Railroad Company, with office in Chicago, and have held that office since July 18, 1931. Prior to then I was Office Engineer for The Chicago and Alton Railroad Company and its Re-
153 ceivers. The receivership of Chicago & Alton Railroad Company extended from August 30, 1922, to July 18, 1931. The Chicago & Alton operated the property now owned by The Alton Railroad Company for many years prior to August 30, 1922. Respondent's Exhibit 5 is a blue-print showing the main line of The Alton Railroad Company, the right

of way line and the switch track leading from the main line of The Alton at Stark Street in Chicago to and beyond the plant of the Moulding-Brownell Company.

(Document marked Respondent's Exhibit 5). I personally prepared Exhibit 5 and know it to be correct, as representing the conditions existing in January, 1932. It also shows present conditions, except that it does not show an extension of the American Sand & Gravel Company track on the easterly end. The main line of the Alton lies about a block south of Hillock Street and runs east and west. It is immediately north of the C. M. & M. Railroad and A. T. & S. F. The right of way line of the Alton is shown with a line made with a dash and 2 dots. It runs east and west. The track colored in yellow on Exhibit 5 is an industry track built many years ago in approximately its present location. The tracks shown on lots 3 and 4 were those built by the Receivers of the C. & A. Railroad for the American Sand & Gravel Company in 1924. The Alton Railroad Company is an Illinois corporation which acquired the properties of the Chicago & Alton Railroad Company on July 18, 1931, and has operated those properties as a common carrier since then. I am familiar with the deeds, easements and agreements of the Chicago & Alton Railroad Company and the Alton Railroad Company relating to the properties in the City of Chicago and have made a search to determine whether or not they have any deed, license or easement covering the land occupied by the track shown in yellow on Exhibit 5. I have found no such document. There is a portion of the track lying between Stark and Mary

Streets on the right of way of the Alton which is owned by the Alton, but I have found nothing giving the Alton or its predecessors title to the land underneath the track shown in yellow on Exhibit 5. The only exception is the ordinance granting to the Alton
160 the right to cross certain streets. I have some of the official railroad records with me, showing tracks of the Alton in the vicinity of the territory covered by Exhibit 5. They consist of two maps dated in 1885, which, together, constitute the layout covered by Exhibit 5. On them the tracks of the Chicago & Alton Railroad Company are shown in red, and the
161 tracks owned by other people in blue. Prior to 1900 it was the practice of the Railroad to show on its maps tracks owned by it in red and tracks owned
162 by other parties in blue. The track shown in yellow on Exhibit 5 is shown on this 1885 map and is shown in blue. Exhibit 5 was prepared without looking
163 at the 1885 maps. Information showing the right of way of the Alton is carried along currently on the maps and the property lines do not change except as additional property is acquired. What is shown on the 1885 maps is the same condition with respect to streets, alleys, roads, etc., as is found on Exhibit 5. If the Alton acquired additional property a new map would be prepared showing it. (Respondent's Exhibit 5 admitted in evidence.)

164 I have also an official map made in 1897 showing the Alton tracks in red and all tracks not owned by it in blue. I have also a map made in 1897 in which the track in question is shown in blue, while
165 tracks owned by the Alton are shown in red. I also have a map from the files of the Alton dated 1894 showing the proposed track of the Heldmaier Stone

Company. The track is shown in blue and the Alton does not claim any ownership in it. It connects with the Cologne Street track immediately west of Throop Street. The large circle is the same one as shown
166 on Exhibit 5, except that I think about 130 feet were added to the Heldmaier track. The Cologne Street track on the 1894 map is the same as the yellow track on Exhibit 5. It is colored blue, showing ownership by parties other than the Alton. The 1894 map also shows a proposed track of the Heldmaier Stone Company, whereas Exhibit 5 shows the track as having been built.

167 *Cross Examination.*

There is no agreement in the file pertaining to the track to the Heldmaier Stone Company, but it is connected with the track along Cologne Street. It has been the practice of the Alton Railroad Company to lay the turnouts connecting its tracks with those of private industries over which it is going to oper-
168 ate. I also have a permanent record of the Chicago & Alton Railroad Company dated in 1897, which lists the Cologne Street track as a private side track. The track is shown as being 3537 feet in length, but there has been some extension of it down to the dock line in lot 6. Those tracks were built under a 1900
169 agreement. It is the same track except that there have been some extensions to it.

*Re-Direct Examination.*

I have the Alton's map a copy of which was attached to the agreement numbered Exhibit 4 and dated April 5, 1924. The signatures appearing on
170 page 5 are W. W. Wheelock and W. G. Bierd. The

blueprint attached is an Alton print. On that print
171 the portion of the track shown in red is the part lying between the point of switch and the point of clearance and is about 75 or 80 feet long. A portion of it is shown as lying on the property of the Sand & Gravel Company. The part of the track shown in green lies beyond the point of clearance and is on the property of the American Sand & Gravel Company. I am familiar with the switch track contracts
172 made by the Chicago & Alton Railroad Company
173 and its Receivers. It is customary for the Railroad to own and maintain that portion of a track lying between the point of switch and the point of clearance, so that no cars will be set down there to foul the track and interfere with operation. I made an
174 investigation of the ownership of the Cologne Street track and the indications were that it was owned by the Peoples Gas Light & Coke Company and perhaps the Commonwealth Edison Company. They paid the entire cost of the elevation of the track from Throop Street to its connection with our main line. The elevation was about 1903. I found nothing to
175 indicate that the Alton or its predecessors had borne any expense in connection with that track to the west line of Loomis Street. I do not know who constructed the track west of Loomis Street. Our rec-
176 ords show that the Alton paid for the extension of the tracks west of Loomis Street into lot 6. The Alton owns the extension of the track from a point in lot 4 down into lot 6 and then from a point in lot 4 up to Loomis Street. East of Loomis Street the
177 track is owned by the Peoples Gas Company, as far as I know.

*Re-Cross Examination.*

I do not know when the part of the track between Throop and Loomis Street was constructed and do not know who paid for it. It is colored in blue on
178 our maps, which is evidence that it was paid for by some one other than the Alton Railroad. We have no information that the track originally extened only to Throop Street. It was in its present location in 1885. On the blueprint attached to the contract of 1924 the track in green is owned by the American Sand & Gravel Company or the Moulding-Brownell Company, and the track in red is owned by the Alton. The track of the Moulding-Brownell connects with the track of the Alton. The Alton operates its
180 engines and cars over the entire piece of track down at the bottom of the Alton map, but our records indicate that the track is owned by other parties. We have been operating over it for at least 50 years.
181 Our records do not show that any right to so operate was ever granted. I do not know that I had any-
182 thing to do with the contract of April 5, 1924, but I usually did read those contracts. The red coloring
183 on the map attached to that contract does not indicate ownership. That particular piece of track is not shown on the maps to which I refer because it
184 was built after the maps were made. We have operated over this track for 50 years, but there is no record of how we secured the right. I do not know who pays the taxes on the property shown in red on Exhibit 5. The Alton bears the expense of maintaining
185 the track here involved from its connection with the main line near Stark Street, around and across Cologne and down to the west line of Loomis Street. So far as I know, it has always paid this expense.

The leads from this track into the industries are maintained by the industries themselves, which is the usual procedure on industrial tracks.

186 *Re-Direct Examination.*

The Alton operates over the so-called Cologne Street track to serve the Heldmaier Stone Company, the Moulding-Brownell Company, the Peoples Gas Light & Coke Company and the Commonwealth Edison Company. I am not familiar, however, with the extent to which the Commonwealth Edison Company is actually served. The operation has always been for the purpose of serving industries.

H. L. STUNTZ, a witness on behalf of the Alton Railroad Company, was sworn and testified:

187 *Direct Examination.*

My name is H. L. Stuntz. I am Assistant Comptroller of The Alton Railroad Company at Chicago, and was also Assistant to the Receivers of The Chicago and Alton Railroad Company. I have been in the accounting department of the Alton and its predecessors since January 1, 1929. The first ordinance
188 relating to the maintenance of the Cologne Street track shown on Exhibit 5 was dated in 1903 and ran to The Chicago and Alton Railroad Company and its assigns. That ordinance was assigned to the Peoples Gas Light & Coke Company, immediately after
189 passage. That ordinance permitted the maintenance of the track over the streets for 20 years. During that period, up to 1924, The Chicago and Alton Railroad Company and the Receivers paid the ordinance

charge to the City of Chicago. That charge was $300 a year. It was repaid to the Receivers of the Chicago & Alton by the Peoples Gas Light & Coke Company, which, between 1903 and 1924 bore the expense of maintaining the track in the public streets. A new ordinance was passed in 1924 running to the
190 Chicago & Alton Railroad Company, its successors and assigns. I don't know that that ordinance was assigned. It raised the cost to $1400 a year and we had a lot of negotiations with the Gas Company trying to get it to pay that charge. The Receivers of The Chicago and Alton and the Alton have paid it up to November 1, 1931, but since then the City has not been paid. The ordinance referred to by the
191 witness Hodgson reduced the charge to $700 from 1932 on, and that is the present charge. I do not know at whose request the 1932 ordinance was passed. The bills received from the City were against the Alton.

198 I said that we had paid the charges of the City up to November, 1931, but I should have said that we have paid them up to November, 1932. The Real
199 Estate and Tax Agent of the Alton had conferences with the Gas Company regarding the ordinance of 1924. He asked the Gas Company if it would pay the charge under that ordinance, and the ordinance was accepted by the Receivers of The Chicago & Alton under the impression that they had an agreement with the Gas Company to take an assignment of the ordinance and pay the charge under it. I have no record of any one paying any portion of the ordinance charge except the Gas Company.

200 J. L. HODGSON, recalled, testified as follows:

*Direct Examination.*

At the present time there are in effect state and interstate rates on the inbound and outbound traffic moving to and from the plant of the Moulding-Brownell Company, these rates being filed with the Illinois Commerce Commission and the Interstate Commerce Commission. My company gets the Chicago rate without any excess charge.

201 (Case marked "Heard and Taken.")

202 Order entered April 17, 1935, extending time for briefs until May 15, 1935.

203 Complainant's Exhibit 1, Docket 22201, being a statement showing that the Moulding-Brownell Company received 2,383 carloads of various commodities over the Alton Railroad in 1933 and 1,657 cars in 1934; and that on these cars the Railroad received estimated revenue of $37,243 in 1937 and $25,124 in 1934.

204 Complainant's Exhibit 2, Docket 22201, being a map of the tracks under consideration.

205 Complainant's Exhibit 3, Docket 22201, being a large scale map showing the tracks under consideration, the tracks being marked in red at points where they cross public streets.

206 Complainant's Exhibit 4, Docket 22201, being contract dated April 5, 1924, between W. W. Wheelock and W. G. Bierd, Receivers of The Chicago and Alton Railroad Company, and the American Sand and Gravel Company. Under this con-

tract, the Gravel Company granted to the Receivers an easement for the construction, maintenance and operation of a switch track upon the premises of the Gravel Company, in the location shown by the blueprint thereto attached. The Receivers undertook to construct the track and furnish the track material required between the point of switch and the
207 clearance point, and the Gravel Company agreed to furnish the track material and construct the track from the point of switch to the point of clearance. The Receivers agreed to refund the cost incurred by the Gravel Company at the rate of $2.00 a car on inbound or outbound shipments, on which the
208 revenue was $15 per car or more. Agreement recites that that part of the switch track shown in red shall be owned by the Receivers, and that part shown in green shall be owned by the Gravel Company, which agreed to maintain the entire track beyond the clearance point.

211 Blueprint referred to in Exhibit 4, Docket 22201, showing track to be constructed under Exhibit 4 in red and green coloring.

211-a Respondent's Exhibit 5, Docket 22201, being map showing track here involved colored in yellow.

212 Alton Railroad Exhibit 1 of January 12, 1937, containing copies of letters written with respect to said track.

232 Petition of The Alton Railroad Company filed on March 11, 1936 with the Illinois Commerce Commission, under its Docket 24391. Petition alleges that the Railroad is a common carrier for hire between points in the State of Illinois, and that for many years it has been rendering rail service to industries

in Chicago, by operation over a switch track shown in yellow upon the blueprint attached to the petition and marked "Exhibit 1"; that the industries thus served are the Commonwealth Edison Company, the Heldmaier Stone Company, the Moulding
233 Brownell Company and Peoples Gas Light & Coke Company; that said switch track was elevated under an ordinance passed by the City of Chicago in 1903, which ordinance imposed a license fee of $300 for maintaining the switch track across certain streets and alleys; that on November 1, 1904, said ordinance and the rights of the railroads thereunder were assigned to the Commonwealth Electric Company and the Gas Company under a contract of November 1, 1904, between The Chicago and Alton Railroad Company, The Chicago and Alton Railway Company, the Gas Company and the Commonwealth Electric Company, the predecessor of the Edison Company; that under said contract, The Chicago and Alton Railroad Company, its successors and assigns, also acquired the right to operate over said switch track during the term of the contract; that the industries agreed to and did pay the cost of elevating the switch track and the license fee imposed by the ordinance of 1903; that the ordinance of 1903 expired in 1923, and that thereafter a dispute arose be-
234 tween the Receivers of The Chicago & Alton Railroad and the industries then served by said track as to the payments to be made to the City and for the maintenance of the switch track thereafter; that in 1924 another ordinance was passed by the City of Chicago imposing a license fee of $1,400 a year for maintaining the switch track across the public streets and alleys and requiring the posting of a bond, in the amount of $10,000; that this ordinance was

accepted by the Railroad Company upon the understanding that the matters in dispute would be adjusted; that in May, 1934, under another ordinance, the license fee for maintaining the switch track was reduced to $700 a year; that negotiations between the industries and the Railroad with respect to the payment of fees to the City and the cost of main-
235 taining the switch track had been unsuccessful, and that the Railroad and its predecessors had been compelled to pay to the City of Chicago the license fees imposed by the ordinances of 1924 and 1934, had paid all cost of maintaining said track, and had kept the bond in the amount of $10,000 on file with the City; that The Alton Railroad Company, the petitioner, is the purchaser at judicial sale of the railways and properties of The Chicago and Alton Railway Company, The Chicago and Alton Railroad Company and the Receivers of The Chicago and Alton Railroad Company, and is now operating those properties; that The Alton Railroad Company had the right, under decree entered in
236 the Receivership proceeding, to elect not to assume the contract of November 1, 1904, and has elected not to assume it; that it will also cancel the bond for $10,000, and that when this is done, there will be no contract obligation upon petitioner to maintain said track, and no authority for maintaining it across public streets and alleys; that the petitioner
237 does not own any of the property upon which said track is constructed, except that part of it lying within its regular right of way, and does not own any part of said track except that part within petitioner's regular right of way lines; that by reason thereof there is no obligation upon The Alton Railroad Company to continue to maintain said track, or

to pay the license fees imposed by the ordinances of the City of Chicago, that obligation resting upon the industries if they desire the continuance of service over the track; that the uniform practice of petitioner in the case of all switch tracks extending
238 beyond its right of way is to require the maintenance and repair of such tracks by the industries served thereby and at their cost, and that any requirement that petitioner maintain the track here in issue will create an unlawful discrimination and preference; that petitioner is willing to continue service upon the switch track if the industries served by it will maintain it at their cost and pay the fees demanded by the City of Chicago; that petitioner
239 maintains rates to the industries on said track, but will cancel them as soon as it is authorized to discontinue operation over the track. The prayer of the petition is that an order be entered determining that the industries served by said switch track should pay all future costs of maintaining it and all license and other fees assessed under ordinance for its occupancy of public streets and alleys; and that in default of such payments petitioner be authorized to discontinue the rendering of service over the track and be authorized to cancel all rates applicable on traffic to and from said industries.

241 Blueprint attached to said petition, showing the track involved in solid yellow coloring. (This document offered and received in evidence as Petitioner's Exhibit 1 at page 255 of record.)

242 Petition served upon Commonwealth Edison Company, Heldmaier Stone Company Moulding-Brownell Company, and Peoples Gas Light & Coke Company, on March 12, 1936, and order entered setting

hearing for March 25, 1936. Order entered March 19, 1936, resetting case for hearing on March 27, 1936. Case called for hearing on March 27, 1936.

243 Report of proceedings had March 27, 1936, on the hearing before the Illinois Commerce Commission in its Docket 24391, "Petition of The Alton Railroad Company, etc."

Appearances—F. H. Towner,
for Petitioner,
Cooke, Sullivan & Ricks,
By H. D. Dines,
for Peoples Gas Light & Coke Company,
C. B. Cardy,
for Moulding-Brownell Company and Heldmaier Stone Company,
and
Isham, Lincoln & Beale,
By M. G. Sampsell,
for Commonwealth Edison Company.

246 Mr. Towner: When I filed this petition with the Commission I requested that this case be consolidated with the complaint of the Moulding-Brownell Company, Docket 22201. I think the cases should be consolidated.

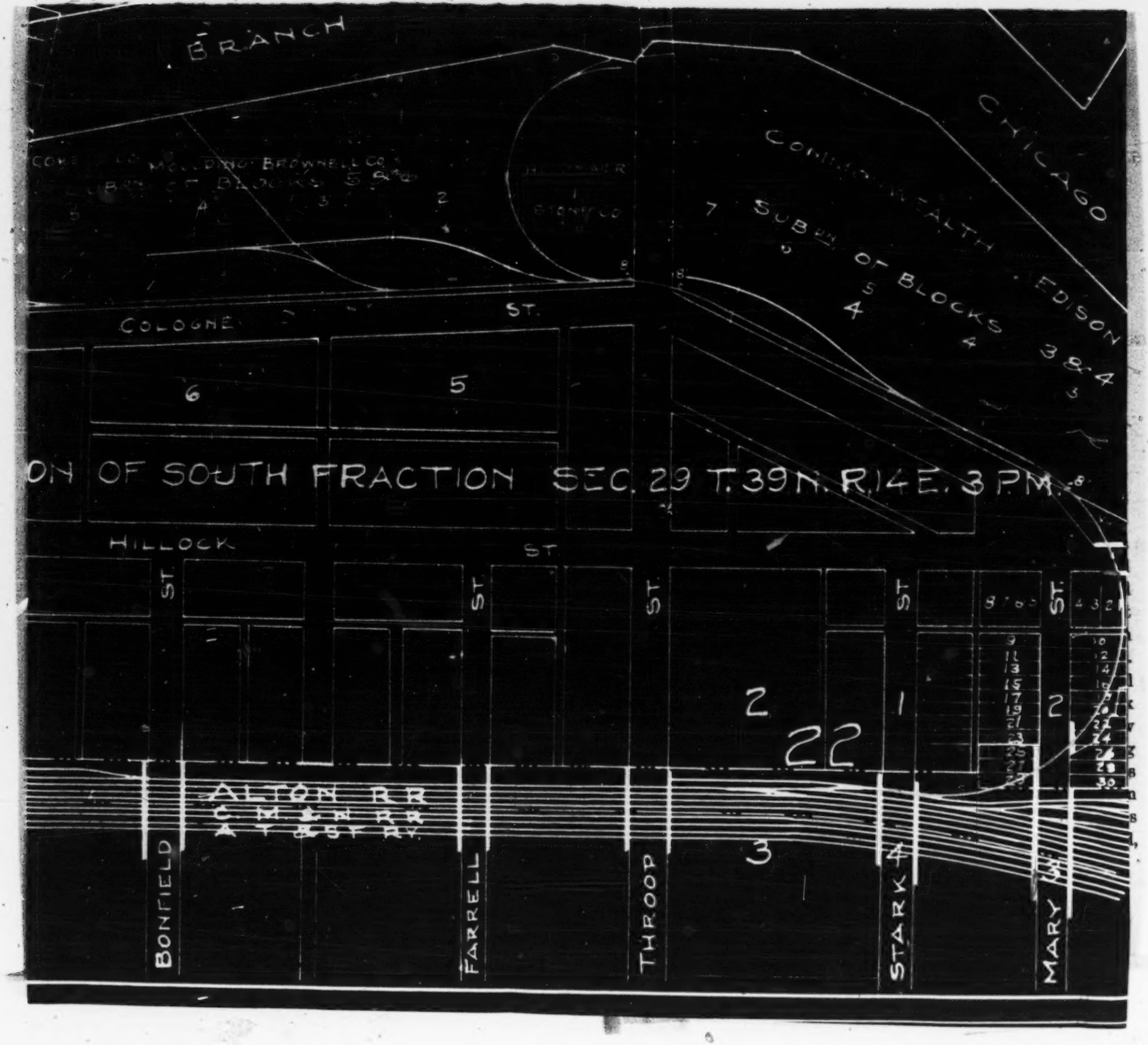
249 Examiner Daley: The motion will be taken with the cases and for the purposes of hearing the two cases will be treated as consolidated.

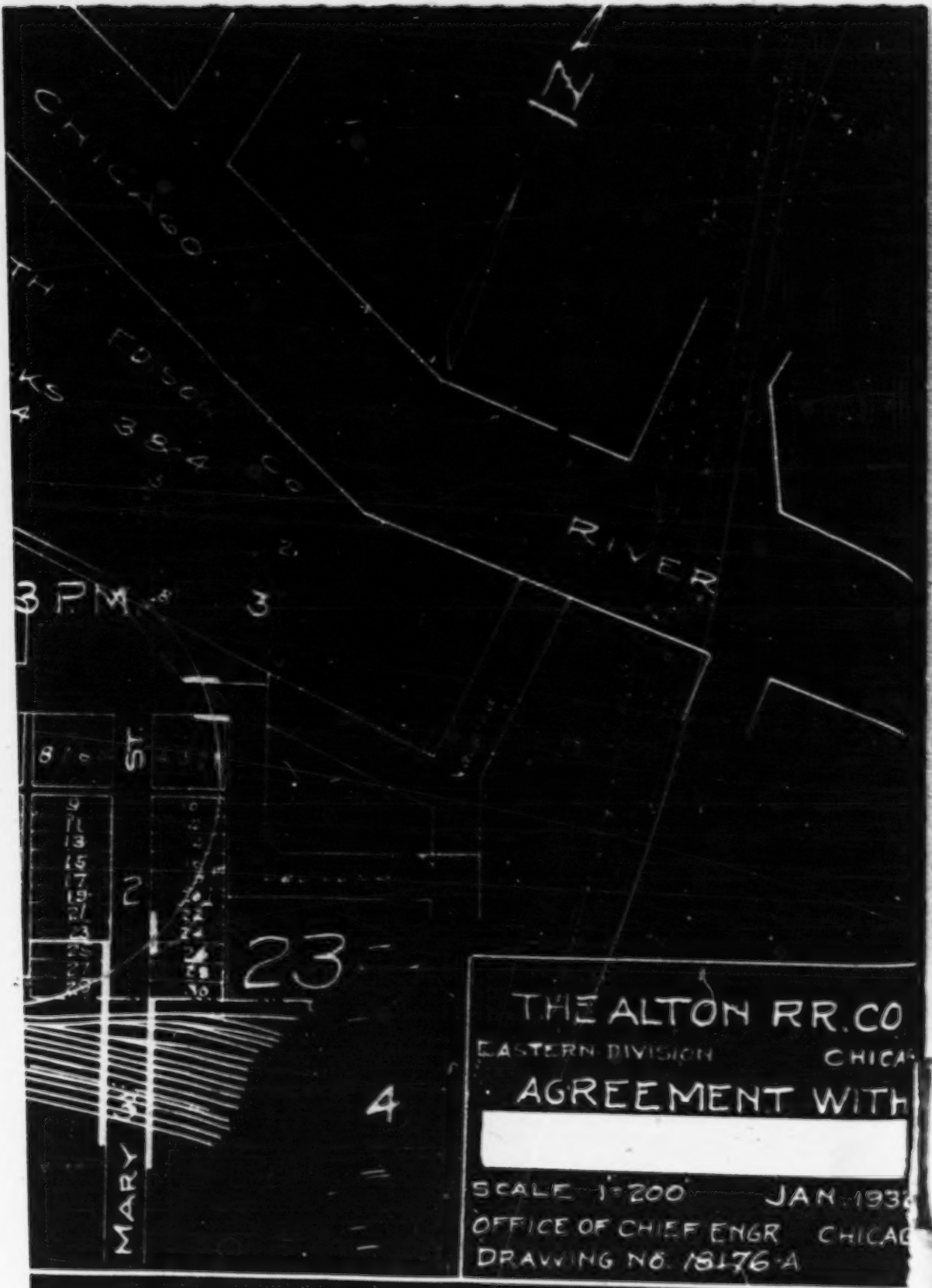
253 M. R. HOAGLAND, a witness on behalf of petitioner, was sworn and testified:

*Direct Examination.*

My name is Milton R. Hoagland and I am Office Engineer of The Alton Railroad Company. I have held that position since 1921. Before that I had been with the Alton and its predecessors since 1909.
254 I have always been in the Engineering Department. I have to work at construction plans and real estate and ownership matters. It is part of my duty to know what is owned by the Alton and what is not owned by it. I am familiar with the switch track extending from the main line of the Alton in the vicinity of Stark Street and which then turns and parallels what was known as Cologne Street. I have been familiar with the track for six or seven years. I prepared the blueprint attached to the petition filed with the Commission in this case. It accurately
255 shows in a yellow color the present location of the track I have mentioned. (Said map offered and received as Petitioner's Exhibit 1. It is reproduced on the following page.) The white lines running
260 off the yellow track shown on the Exhibit 1 are spur tracks. The one lying in lots 5, 6 and 7 of blocks 3 and 4 is owned by the Peoples Gas Company. The map indicates that the Commonwealth Edison Company owns lots 5, 6 and 7 in blocks 3 and 4, but the Peoples Gas Company actually owns those lots. The next track in lot 1 of blocks 5 and 6 serves the Heldmaier Stone Company. West of
261 this track is the easterly connection of the Moulding-Brownell Company, which was installed about

SOUTH
BRANCH
PEOPLES GAS LIGHT AND COKE CO
SUBDN OF BLOCKS 7, 8 & 9
MOULDING BROWN
SUBDN OF BLOCKS
COLOGNE
8
7
6
9
CANAL TRUSTEES' SUBDIVISION OF SOUTH
HILLOCK
ST
FULLER
ST
ST
ST
ILOCK
GREELEY ST
GRADY
ST.
LOOMIS
BONFIELD


BRANCH
CHICAGO
COMMONWEALTH EDISON
7 SUBDN. OF BLOCKS 3 & 4
5
4
3
COLOGNE ST.
6
5
ON OF SOUTH FRACTION SEC. 29 T. 39 N. R. 14 E. 3 P.M.
HILLOCK ST.
ST.
ST.
ST.
ST.
ST.
2
1
22
3
4
ALTON R.R.
C.M.&St.P. R.R.
A.T.&S.F. RY.
BONFIELD
FARRELL
THROOP
STARK
MARY


CHICAGO
RIVER
3 P.M.
3
ST.
MARY
23
4
THE ALTON R.R. CO
EASTERN DIVISION
AGREEMENT WITH
SCALE 1" = 200'
JAN. 193
OFFICE OF CHIEF ENGR
CHICAG
DRAWING NO. 18176-A

1932, and further west is another Moulding-Brownell track, built for the American Sand & Gravel Company in 1924. In lot 5 of blocks 5 and 6 on Exhibit 1 there is a stub track crossing Loomis Street and entering the plant of the Gas Company. All those tracks are spur tracks leading off of the track here involved, which is shown in yellow on Exhibit 1. The question of maintenance and street rights here involved is in connection with the track shown in yellow lying east of the west line of Loomis
262 Street. The main line of the Alton runs approximately east and west and its right of way is indicated by a broken line of a dash and two dots. The Union Station would be to the right hand of Exhibit 1. Immediately south of the Alton main line is the main line of the Illinois Central, and south of that is the main line of the Santa Fe. Exhibit 1 accurately shows the present layout of the track in question and the tracks leading off it. I
263 have made an examination of the records of the Alton to determine the ownership of the tracks shown in yellow on Exhibit 1. I have examined all of the correspondence files and the maps, and the earliest map I find is one of July, 1884. At that time the Alton tracks were shown on its maps in red and the tracks owned by other parties in blue.
265 That practice has been followed in making up all of the older maps. I do not know when the track here involved was constructed, but our maps show it in existence in 1884. I failed to find anything prior to 1884. I do not have copies of the various maps of this track which I have now located. On the map of July, 1884, this particular track was
266 colored blue, showing that it was privately owned,

and the main line of the Alton was shown in red. That map does not show all of the track as it now exists, but only shows the portion that was then
267 constructed. I am able to identify it, however, as the track here involved. I also located two maps made in 1885, on a larger scale than the 1884 map. They bear the inscription "Corrected August 1, 1885," and show the track in question colored blue and extending into lot 3 of blocks 3 and 4. The second portion of the map shows the track colored blue and extending down Cologne Street to the
268 plant of the Gas Company, which is designated as the Chicago Gas Light & Coke Company, a predecessor of the Peoples Gas Light & Coke Company. The 1885 map shows the track as stopping just east of Deering Street, now known as Loomis Street. The plant was just west of Loomis Street. I conclude that the extension across Loomis Street to the plant of the Gas Company was made after the 1885 map was made. On both 1885 maps the
269 track in question is colored blue and the main line of the Alton is shown in red. The other tracks colored in blue on this map are owned by parties other than the Alton. There is one leading to the Ware
270 Johnson Company and one to Cox Brothers, both colored blue. The next map I found was dated
271 April 15, 1887, which shows the main line and side tracks of the Alton in red, and it shows the track in question in blue, again showing private ownership. The 1887 map does not show the track as it now exists, as spurs have been added to it, and it also shows some tracks that are no longer there. It shows a track on the west side of Deering, or Loomis Street to the plant of the Gas Company

as a proposed track. The next map I found is dated in January 1888. It also shows tracks owned by the Alton in red, and shows the track in question, along with others, in blue. The next map I found
272 is dated July, 1892, and shows a proposed extension of the track in question to the Gas Company. On this map also the track is colored in blue. The next map I found was dated October, 1892, and, in addition to the extension proposed on the map of July, 1892, shows a further extension of approximately 600 feet west. The proposed extension is
273 also shown in blue. It bears the inscription "Showing by blue lines the Gas Light & Coke Company track. Showing by dotted blue line track wanted by the Gas Light & Coke Company." The blue line on this map comes up to a point immediately west of Deering, or Loomis Street and includes all the construction that was in or proposed in 1887. The next map I found is dated April
274 26, 1894, and shows a proposed track to the Heldmaier Stone Yard. The track in question is shown in solid blue and the proposed track is shown added in blue. The track proposed on this map of 1894 was presumably constructed, as it is shown on Petitioner's Exhibit 1, as connecting with the track shown in yellow. The next map I found is dated
275 in June of 1894. On it the Heldmaier track is shown in solid blue, indicating that it had been built subsequent to April, 1894. The track in question is also shown in solid blue. The next map I found is dated March 2, 1897, and shows the track in
276 question in blue, together with the main line of the Alton in red. I also found a map dated February 16, 1897, made in connection with an application for a track by the Corneau Lumber Company, im-

277 mediately west of the Heldmaier property. All of the track in question is shown in blue, as is the track proposed. Apparently at that time there were two tracks paralleling each other on the north side of Cologne Street, instead of one, as now. The next map I found is dated in May, 1898, and shows the right of way and tracks of the Alton from Stewart Avenue to Bridgeport. On this map the main line of the Alton is shown in red and the track in question, together with the track leading off of it, are all shown in blue. The entire track is shown
278 as extending northward from the Alton main line across Mary Street and Hillock Street, and then paralleling Cologne Street on the north side of the street in a general easterly and westerly direction. It is all shown in blue. Some spur tracks extending from the main line of the Alton are shown on this map in red, which indicates that they were
279 tracks owned by the Alton. I do not know whether they were maintained by the Alton, but they do indicate ownership by the Alton. I also have the original Road Master's record of the ownership of
280 tracks in 1898. In this book tracks owned by the Alton were designated "Permanent side tracks," and under it is listed the lead to the Cologne Street track, with a total length of 150 feet. Under the heading of "Private side tracks" is shown the Cologne Street track here in issue, with a total length of 3537 feet. In referring to the lead to the Cologne Street track, the book refers to the track connecting with the Cologne Street track here in issue within
281 the right of way line of the Alton. The 150 feet of track was a spur leading off from the main line of the Alton, but on the Alton right of way, and con-

necting with the Cologne Street track here involved. The book shows that the Alton owned that part of the track located on its right of way and that it did not own that part of the track which was not located on the right of way. I also discovered a
282 blueprint dated February 10, 1904, made by the Commonwealth Electric Company and setting out a proposed readjustment of these tracks. It presented a plan for the elevation of a part of the track here involved, and the track as it exists today shows agreement with that plan. The foregoing
283 are all the maps I was able to locate dealing with the track here in issue.

Mr. Towner: I do not have copies of these maps but will furnish them if anybody wants them.

Mr. Dines: The Gas Company will waive them.

Mr. Cardy: I assume the map attached to your petition tells the story, but I would like to have pages 180 to 197 of the book listing the side tracks.

285 The Witness: Page 180 of that book shows the
286 permanent side tracks leading from the main line of the Alton to connections and industries. The term "Permanent side tracks" in the book indicated tracks owned by the Alton. The names indicate the various industries located upon the side
287 tracks. The permanent side tracks as shown in this book are not necessarily maintained by the Alton, as we own many tracks which industries are bound to maintain under contract. Most of these side tracks are covered by separate agree-
288 ments. Some of the tracks are shown in the book as cross-connections, which might indicate tracks connecting the Alton tracks with other tracks. The

term "Permanent side track" does not always indicate that an industry is located on the side track.
289 The maps about which I have testified are all the original maps I have been able to locate indicating the ownership of the track here involved, and all of them show that the track is not owned by the Alton.

The first contract I found relating to the switch track here involved was dated November 15, 1900.
290 It is between The Chicago and Alton Railway Company and the Peoples Gas Light & Coke Company. The blueprint which was supposed to be attached to it was identical with the one which is attached to the next succeeding contract. (Said document offered and received in evidence, marked "Peti-
291 tioner's Exhibit 2.") All of the track shown in yellow on Exhibit 1 is covered by Exhibit 2, which
292 recites the existence of all the track down to lot 3 in block 8 and provides for the construction of an extension from lot 3 in block 8 over lots 4, 5 and
293 6. Petitioner's Exhibit 3 is a copy of an ordinance passed by the City Council of Chicago on November 2, 1903, providing for the elevation of a portion of the track shown on Exhibit 1. The track was elevated from the point of connection at Stark Street around to the east line of Throop Street. (Said document offered and received in evidence, marked "Petitioner's Exhibit 3".) Petitioner's Ex-
294 hibit 4 is a copy of an agreement dated November 1, 1904, between The Chicago and Alton Railway Company, Peoples Gas Light & Coke Company and the Commonwealth Electric Company. The Chicago and Alton Railway Company was the predecessor of petitioner and the Commonwealth Elec-

tric Company was the predecessor of the Commonwealth Edison Company. This contract relates to the partial elevation and future maintenance and operation of the track here involved. (Said docu-
295 ment offered and received in evidence, marked "Petitioner's Exhibit 4.") Petitioner's Exhibit 5 is a
296 blueprint which was attached as Exhibit 1 to Petitioner's Exhibit 4, and shows in colors the portion of this particular track which was to be elevated under the ordinance introduced as Petitioner's Exhibit 3. We have no record showing that the track shown on Exhibit 5 at the west end of the track in the sub-division of blocks 7, 8 and 9 was actually built in the position shown. They were supposed to be built in that location under Petitioner's Ex-
297 hibit 2, but were extended in a straight line across lots 4, 5 and 6 in the sub-division of blocks 7, 8 and 9, as shown on Petitioner's Exhibit 1. (Petitioner's Exhibit 5 offered and received in evidence, marked "Petitioner's Exhibit 5.") Petitioner's
298 Exhibit 6 is a copy of an assignment of the 1903 ordinance for the elevation of this track, by The Chicago & Alton Railway Company and The Chicago & Alton Railroad Company to the Commonwealth Electric Company and the Gas Company. The Chicago and Alton Railway Company and The Chicago and Alton Railroad Company were predecessors in interest of petitioner, and the assignment was actually made pursuant to the provisions of the contract identified as Petitioner's Exhibit 4. The blueprint referred to in Exhibit 6 is identical
299 with the blueprint which has been introduced as Petitioner's Exhibit 5. (Said document offered and received in evidence, marked "Petitioner's Exhibit

6.") Petitioner's Exhibit 7 is a copy of an agreement between the Commonwealth Edison Company and The Chicago and Alton Railroad Company to provide a trestle for an opening beneath the track as shown on Exhibit numbered 1. Attached to Exhibit 7 is a blueprint identifying the location of the work to be done. (Said document offered and received in evidence, marked "Petitioner's Exhibit 7.")

Petitioner's Exhibit 8 is the blueprint attached to the contract introduced as Petitioner's Exhibit 7. (Said document offered and received in evidence, marked "Petitioner's Exhibit 8.") Petitioner's Exhibit 9 is a copy of an agreement between W. W. Wheelock and W. G. Bierd, the Receivers of The Chicago and Alton Railroad Company and the American Sand and Gravel Company, dated April 5, 1924. It provides for the construction of a track leading from the track in question, as shown on Exhibit 1, to serve the American Sand and Gravel Company, which has now been succeeded by the Moulding-Brownell Company. (Said document offered and received in evidence, marked "Petitioner's Exhibit 9.") Petitioner's Exhibit 10 is a blueprint which was attached to the contract introduced into evidence as Petitioner's Exhibit 9, and shows the construction provided for by that contract. (Said document offered and received in evidence, marked "Petitioner's Exhibit 10.") Petitioner's Exhibit 11 is a copy of an ordinance passed by the City Council of Chicago on December 10, 1924, imposing a charge of $1400 a year for maintaining the switch track here involved across public streets and alleys. (Said document offered and received in evidence,

marked "Petitioner's Exhibit 11.") Petitioner's
305 Exhibit 12 is a copy of a proposed agreement between petitioner and the Moulding-Brownell Company covering the installation of a connection between an existing track of Moulding-Brownell and the track in question as shown on Exhibit 1. It is dated April 7, 1932, but was not executed by the Alton Railroad. The track itself was actually built and is shown in red on the blueprint attached to the contract. Petitioner's Exhibit 1 also shows this
306 track as having been constructed. (Said document offered and received in evidence, marked "Petition-
307 er's Exhibit 12.") Petitioner's Exhibit 13 is a blueprint which was attached to Petitioner's Exhibit 12 and shows in red the track provided for by Exhibit 12. (Said document offered and received in evidence, marked "Petitioner's Exhibit 13.") Pe-
308 titioner's Exhibit 14 is a copy of an ordinance of the City of Chicago dated May 9, 1934, reducing from $1400 a year to $700 a year the charge for the occupation of streets and alleys by the switch track here involved. The ordinance only reduced the $1400 fee imposed by the 1924 ordinance to $700 a year. (Said document offered and received in evidence, marked "Petitioner's Exhibit 14.") Pe-
309 titioner's Exhibit 15 is a copy of the election of petitioner not to adopt the agreement of November 1, 1904, between The Chicago and Alton Railway Company, the Gas Company and the Commonwealth Electric Company, which agreement was introduced as "Petitioner's Exhibit 4." This election has been filed in the office of the Clerk of the District Court. (Said document offered and received in evidence, marked "Petitioner's Exhibit 15.")

310 Mr. Towner: This election to disaffirm was authorized by the Decree of Foreclosure and Sale and the deed under which petitioner was authorized to take this action. I will not supply a copy of that Decree if there is no request for it.

312 Mr. Dines: I don't care for it.

Mr. Cardy: We don't want it.

313 Petitioner's Exhibit 16 consists of copies of three letters between petitioner and the Commonwealth Edison dated January 26, 1910, February 7, 1910, and February 15, 1910. They relate to operation by the predecessors of the Alton over the side track here involved and its right to so operate subsequent to January 1, 1910. (Said document offered and received in evidence, marked "Petitioner's Exhibit
314 16.") Petitioner's Exhibit 17 is a copy of a letter dated January 31, 1911, to the Chief Engineer of The Chicago and Alton by a representative of the owners of property abutting on the track here in issue other than the Gas Company and the Edison Company. The letter refers to a contract of July, 1905, which I have not been able to find. I exam-
315 ined the records of the Alton but can find no record or copy of the agreement. The letters contained in Petitioner's Exhibits 16 and 17 came from the correspondence files of the Alton. (Said document offered and received in evidence, marked "Petitioner's Exhibit 17.") Petitioner's Exhibit 18 is an
316 estimate of the annual cost involved in maintaining the track in question, as shown on Exhibit 1. It is an estimate of future expenses. The annual running repairs total $998 per year. The expenses listed under reconstruction costs will probably be in-

curred in the next three years, excepting the reconstruction of steel bridges, which is set up on a
317 basis of 18 years. The running repair expenses, however, would be current in every year. We have no record of what the Alton has spent maintaining this track in the past years, as the expenditures were not segregated. It is reasonably certain that for the next three years, at least, the annual cost of maintaining the track will be almost $4,000 a year. (Said document offered and received in evidence, marked "Petitioner's Exhibit 18.") The
319 Alton and its predecessors have operated over the track involved at least since 1904. I know nothing about the facts prior to then. At the present time
320 and for some years, however, it has operated over the track serving the industries. During all that time the Alton Railroad or its predecessors have paid for maintaining the track, and so far as I know, no one has refunded these amounts to the Alton, except that on that part of the track shown in yellow, west of the west line of Loomis Street, the maintenance has been paid by the Gas Company, as the track is within its plant. We do the work and send
321 the bills to the Gas Company. The Alton pays the maintenance on that part of the track shown in yellow on Exhibit 1 east of Loomis Street and around to the connection with the main line of the Alton, and does not collect this amount from anybody. We maintain the tracks to the Heldmaier and Moulding-Brownell concerns, but they pay us for
322 it. In the case of the spur shown in lots 5, 6 and 7 of blocks 3 and 4 on Exhibit 1, we maintain up to the heel of the frog, and beyond that the maintenance is paid by the Gas Company. The track that we maintain as shown on Exhibit 1 is that portion of

the track shown in yellow east of the west line of Loomis Street around to the connection with the
323 main line. To some extent I have supervision of side-track agreements between the Alton and industries, and have had occasion to work on those agreements. I am generally familiar with the provisions of such agreements. Most of those agree-
324 ments have clauses dealing with the construction and maintenance of the tracks. The form handed me is the standard form of switch-track agreement entered into by the Alton and industries with respect to switch tracks, and, generally speaking, all side-track agreements made by the Alton are in
325 this form. That is particularly so of paragraphs 2 and 3 of the standard form dealing with the location of such tracks and the expense of maintaining, repairing and renewing them. Under paragraph 2 the industry grants to the railroad an easement for the construction, maintenance, operation and
326 repair of any such track and the necessary easement for clearance, and undertakes to get such an easement in case the track crosses property owned by any other party. Under paragraph 3 the railroad agrees to maintain, repair and renew the track, but the industry agrees to pay the cost thereof within 20 days after receiving a bill therefor. The paragraph also provides that if the track serves more than one industry, the cost of the maintenance
327 shall be divided among the industries. I am generally familiar with the side-track agreements in effect between the Alton Railroad and industries served by it, and have examined them to ascertain whether or not there are any agreements under which the Alton secures the right of way for side

tracks or pays for maintaining them. I have found
328 no such agreements. The track here in issue is the only one that I know of where the Alton pays for maintenance. In all other cases the industry furnishes the right of way and maintains, repairs and renews the track. In some cases the industry even maintains track which we own and is on our right of way, but in no case does the railroad maintain track which it does not own and is not on its right of way. The right of way of the Alton is gen-
329 erally shown on its map by lines consisting of a dash and two dots. On Petitioner's Exhibit 10 the track here in issue is shown as being within the
330 right of way and lines of the Alton, but that was done because we had to have clearance in connection with the operation of the track, and the right of way line was put on that map, not to designate our ownership of the property, but to designate the clearance required by all. On Petitioner's Exhibit
331 13 the track north of Eleanor Street is shown within Alton right of way marks, but that also was only to indicate the clearance required. In neither case does the use of these marks indicate ownership by the Alton.

*Cross Examination.*

332 The track shown in yellow on Exhibit 1 is 2831 feet in length from the point of switch at Stark to the west side of Loomis Street, where the gate of the Gas plant is located. In addition, there is about 1100 feet of track inside the Gas plant. The track in question was originally built from the connection at Stark Street to a point in lot 5 east of Loomis Street, or about 2500 feet. In 1887 it was extended across Loomis Street into the Gas Com-

333 pany. Later it was extended to lot 3 in blocks 7, 8 and 9, and thereafter to the end of lot 6. I do not know that the Alton has operated over the track since 1887. The maps indicate that the track was there and connected with the Alton track. I do not know who constructed the track in the first instance. We now serve three industries on this track. The
334 Illinois Central does not use it. Five spur tracks extend from the track in issue into various indus-
336 tries, as shown on Exhibit 1. Our standard form of side-track agreement does not cover a situation like this one. The standard agreement applies when a track cuts out of an Alton track on Alton right of way to an industry. Exhibit 12 does not cover
337 substantially the same situation that would be covered by the Alton standard agreement. Under the standard agreement the Alton would own the track from the point of switching to the point of clearance; would own the track from the point of clear-
338 ance to the property line; and the lessee would own the track outside of the property line. The agreement would also provide that the Alton would maintain the track from the point of switch to the point of clearance and that the industry would maintain the track from the point of clearance beyond. Exhibit 12 has no such provisions. The Alton
339 and its predecessors have had a right to operate over the track shown in yellow on Exhibit 1 since 1904, but I am not sure that that right has been unrestricted. During that time the Alton has maintained the track under the terms of the contract. I do not know who owns the land
340 under this track. I do not know that any shipper
341 has ever attempted to interfere with Alton operation over that track in the last three or four years.

342 I estimated the running repairs on this track by going out and looking at it. The switch ties and bridge ties have to be renewed from time to time and are renewed as needed. It would cost $2639 to renew all the ties of the track and the average annual cost would be one-tenth of that. There is approxi-
343 mately half a mile of track involved. The annual running repairs of approximately $1,000 are a little high because this track has a lot of bridging in it. An ordinary side track has no bridge. I have not guessed as to the replacement each year on this particular track. I have estimated the cost based on a
344 knowledge of a life of timber. This track is laid with 18-pound rail and our company does not buy that rail. When we relay that track it will be relaid with 90-pound rail. In the last few weeks we have had two broken rails in the track and when I walked over it yesterday I saw a rail broken in the joint.
345 Two of these rails have been replaced. This is evidence that the track has about served its usefulness and that all rails will have to be removed within three years. The track has been maintained, but rail has a definite life and much of this rail is on a curve and subject to heavy use. I don't know when the track was last relaid. The bridges were
346 constructed in 1904. The life is commonly taken as 50 years, which leaves about 18 years of remaining life in the steel bridges. The trestle has been
347 rebuilt since it was originally built. Its condition is bad now and it must be renewed within three years. It was originally constructed in 1904. It has a longer life than ties because it is not in the
348 ground. The amount of maintenance a track requires is reflected to some extent by the traffic over it. Use of track affects maintenance cost, and not

349 construction costs. The figures in Exhibit 18 were estimates based on my knowledge as a railroad engineer, although it is not based upon tests in connection with this particular track. We could not segregate the cost of maintaining this track in past
351 years from our other costs. The Alton does not maintain any switch tracks in the Chicago district not located on its right of way and not owned by it. Our standard form of agreement has been lately revamped, but is similar to the one that was used
352 prior to 1931. The provision requiring an industry to maintain the track has been in that contract as far back as 1905. The track here in issue was a special condition, and evidently called for a special
353 contract. A City ordinance of Chicago, passed in 1900, required the elevation of the Alton's main tracks, and this track had to be elevated in order to connect with the main track. The cost of that elevation from Throop Street to Stark Street was paid half by the Gas Company and half by the Edison Company. The track is not elevated across Loomis Street. The approximate cost of the eleva-
354 tion was $37,000. The contract under which the Alton operated over the track could be terminated on a year's notice. We have served other industries on the track since the date of the agreement. At
355 one time the Edison Company and the Gas Company attempted to collect $12,000 from some concern for service over this track, but so far as I know they never got it. Permission had to be secured from the City of Chicago where this track was constructed across streets.

356 The license fee was paid to the City of Chicago from 1904 to 1924 by the predecessors of the Alton

and this amount was afterwards paid to the predecessors of the Alton by the Gas Company. The payments began as of November 2, 1903. Since that time the Alton has been serving industries other than the Gas Company off this track. Our
357 officials considered the location of other industries on the track a matter for the Edison Company and the Gas Company. I do not know that the Alton received any benefit from those other industries. The last line on Exhibit 18 relating to taxes represents taxes that the Alton seems to have paid in error and is based on the last taxes that were paid.
358 During the time that the Alton paid those taxes the item represented an expense. It appears that the Alton, by mistake, paid taxes on property which it did not own. The standard form of agreement
359 usually covers a case where only one firm is involved. There are no service connections from the track shown in yellow on Exhibit 1 into the property of the Edison Company. Before that track was elevated there were tracks leading from it into the property of the Edison Company, and when the agreement of 1904 was made provision was made for the construction of a track extending over through lot 3 in Blocks 3 and 4 and across Hickory Street. I don't know whether the industry was a tenant of the Edison Company, or whether the Edi-
360 son Company expected to use the track. There was an estimate of about $1600 to cover the cost of that track, but it was never built. The Edison Company has never received service over the track, but the presence of the track on its property adds value to that property. The Edison Company has a connec-
361 tion with the Alton east of Quarry Street, and that route is used. None of its traffic comes in over the

track here in issue, although I think that along in 1914 or 1915 some material was delivered on this track. Since then there has been none to my knowledge.

362 *Re-direct Examination.*

The track here in issue is elevated across Stark Street, Mary Street and Hillock Avenue, although Hillock Avenue may designated as Hickory Street at that point. The bridges are steel ballast deck bridges. Prior to 1904 the track was on the ground across these streets. Some of the contracts entered into by the predecessors of the Alton with industries are still in effect. On none of them does the Railroad
363 Company pay for the maintenance of tracks not located on its right of way, except in a few isolated cases, where the track was laid on land and maintained by us as a condition of the deed by which we acquired our right of way. The Alton has never paid anything to an industry served by a track if a second industry comes along and wants to use the track. The payment in that case would be made to the first industry. The Alton never has had any-
364 thing to do with that. I know of no case where we have built a track under an agreement to serve two industries, but in one case I know of another industry came along on the same track after it was built.
365 The track was then extended at the expense of the second industry, but we had nothing to do with it and made no payment on account of it.

C. D. SIPE, a witness on behalf of petitioner, was sworn, and testified:

*Direct Examination.*

My name is C. D. Sipe, and I am assistant to the Vice-President of The Alton Railroad Company. The Vice-President is the chief officer of the Rail-
366 road. I have been connected with the Alton and its predecessors since February, 1908, and I have been assistant to the Vice-President of petitioner since July 18, 1931. I was connected with The Chicago and Alton Railroad Company and its receivers.
367 The Chicago and Alton Railroad Company went into receivership August 13, 1922. W. G. Bierd and W. W. Wheelock were the Receivers appointed by the District Court in Chicago. The receivership ended on July 18, 1931, when petitioner acquired the property at the foreclosure sale. It has since oper-
368 ated the property. I am familiar with the track involved in this proceeding and have been particularly familiar with it since 1928. The ordinance of November 2, 1903, of the City of Chicago called for a license fee of $300 a year. From that time until 1923 the Gas Company paid the license fee. The ordinance itself was assigned to the Gas Company and the Edison Company in November, 1904. I
369 am also familiar with the ordinance passed in 1924, Petitioner's Exhibit 11, and the amendment thereto, by which the license fee was reduced to $700 a year. All of the payments made under the last two ordinances have been made by the Receivers of The Chicago and Alton Railroad Company and the Al-
370 ton. $1400 a year was paid from November 2, 1923, until November 2, 1932. The Receivers also posted

the bond required by the ordinance of 1924 and have paid $10 a year premium on it up to November 2, 1936. In 1923, 1924 and 1925 the Gas Company refunded to the Receivers $300 of the $1400 paid by the Receivers to the City in those years, and thus paid a total of $900. Since November 1, 1932,
371 petitioner has paid the $700 a year required by the ordinance passed in 1934, and has also paid the premium on the bond. The fees and the premium are now paid up to November 2, 1936. No portion of the amounts paid by petitioner has been repaid to it by anybody, and the bond is still in effect. Petitioner does not propose to pay the premium
372 on that bond after November of this year, and I imagine the bond will be cancelled and the City will order the tracks out of the street. I am familiar with the discussions between the Receivers and petitioners and the industry served by this track in connection with the future operation and maintenance of the track and the payment of the license fees. The Receivers were under the impression that when the 1903 ordinance expired, the contract of November 1, 1904, required the Gas Company and the Edison Company to continue to pay the increased license
373 fee. We concluded that from the provisions of Article V of the 1904 contract. It was clear that after the 1903 ordinance expired a further ordinance would be necessary, and the Receivers assumed that the
374 Gas Company and the Edison Company would renew the ordinance and continue to pay the fee. The matter dragged along until December, 1924, when the Receivers received a notice from the City that they would have to decide about adopting the new ordinance. Mr. Green, the Real Estate and Tax Agent, was sent to call upon the Edison Company. I know

of no negotiations with respect to the matter with the Receivers' office, but the Receivers asked Mr. Green to call on the Edison Company and the Gas
375 Company and find out what they would do. As a result of the conferences the Receivers of The Chicago and Alton Railroad Company filed an acceptance of the 1924 ordinance and posted the bond, with the understanding that the fee required by the ordinance would be paid by the Gas Company. Since
376 that time the Alton and the Receivers have been required to pay all of these fees. Negotiations were also carried on between the Receivers and the Alton on the one hand, and the industries on the other. In 1928 the Gas Company said it would be willing to pay one-half of the license fee of $700 a year until 1928, and would pro-rate the fee subsequent to that time with the other industries, provided we
377 would maintain the track. The last proposition made was that the Gas Company would pay $700 of the license fee after it was paid by the Alton in
378 1931, and that thereafter it would pay $300 a year if Moulding-Brownell would pay $200, Heldmaier $100, and the Alton $100, with the further understanding that the Alton would maintain the track. That proposition came to me from our lawyers, and was the last one submitted. The Vice-President re-
379 fused to accept it and instructed the legal department to take such action as was necessary to cancel existing contracts and require the industries to maintain their own property and pay the fees to the City.

380 *Cross Examination*

The last proposition made to me was made after the $700 ordinance was passed. The proposition was that the Gas Company would pay to the

City $300 a year, Moulding-Brownell $200 a year, Heldmaier $100 a year, and the Alton $100 a year, providing the Alton continued to maintain the track.
381 I don't know where the proposition originated, but it came to me from our lawyers. I know nothing about any agreement of counsel. There was no agreement in 1924 with the American Sand and Gravel Company that it was to pay any franchise
382 tax. The premium on the bond of $10,000 posted under the ordinance of the City is $10 a year. I am familiar with the provisions of Article VII of Petitioner's Exhibit 4. Under it the Gas Company and
383 Electric Company assume the obligations of the Railroad under the ordinance. Those companies complied with that provision. Article V of the contract, however, referred to future ordinances. I
384 know of nothing in the contract requiring the Gas or Edison Company to comply with the provisions of the 1924 ordinance.

*Re-direct Examination.*

The last four years license fees required by the ordinance were paid by the Alton in the last few months after suit had been brought against it and against its bondsman. The Railroad paid in order to protect the bondsman, but after November 1st
385 we will not have a bondsman to protect.

*Re-cross Examination.*

We made an estimate of the traffic that we handled over the track in issue in 1934, and found that the revenue was around $40,000. I don't know that that would be profitable for us. I made no careful
386 investigation to determine what net revenue we were

getting out of the track. Our thought is that we are not required to maintain property that we do not own and which is not on our right of way.

387 H. F. GREEN, a witness on behalf of petitioner, was sworn and testified:

*Direct Examination.*

My name is H. F. Green, and I am Real Estate and Tax Agent of The Alton Railroad Company. I have been connected with the Alton and its predecessors about 23 years, and since 1918 have been Real Estate and Tax Agent. It is true that the Alton paid taxes on the track here involved for some period.
388 We found that we had paid back to 1928. I filed the tax returns. After getting the total number of feet of all side track from the engineers, I supplied that figure to the tax authorities in the return. When I returned this particular track for tax purposes I did not know that I was including it. I first discovered about a month ago that we had been paying taxes on
389 this track. It has now been eliminated from the next return. I had a number of negotiations in connection with the acceptance by the Alton of the 1924 ordinance. At that time I was advised by the City Hall that the time for acceptance would expire the next day. I reported this to the Receivers and was told to handle the matter. I found it had been handled with Mr. Huston of the Edison Company, so
390 I called him up. He suggested I talk with Mr. Gilchrist, and I talked with Mr. Gilchrist the next day, which was the last day. Mr. Gilchrist called in his lawyer and they concluded that since the Gas Company was more vitally interested we should

go to see the lawyers for the Gas Company. I told Gilchrist that the Receivers would not file the acceptance of the ordinance unless they were reim-
391 bursed for the license fee by the Edison Company and the Gas Company. When we got to the office of the lawyers of the Gas Company, I explained that it was a matter of our not paying the $1400, but I was told that since we had had so much difficulty in getting the ordinance, we had better file the acceptance. In accordance with this, and on the assurance that the Gas Company would pay the $1400 a year, I filed the bond and the acceptance.

392 *Cross Examination.*

When I went to the office of the lawyers of the Gas Company I was told that since it was Saturday morning, something would have to be done in a very
393 little time. The Edison Company people said that they only had a small interest in the matter and that the Gas Company was more interested. I said that the Gas Company made the principal use of the track, and Judge Cook then said that under the circumstances there was nothing to do but accept the ordinance. This particular track does not come
394 under the Alton mortgage, as we do not include under the mortgage all property upon which we pay taxes. The only property subject to the mortgage is property on which we have the record title. The taxes
395 we paid were only on the track. We paid no taxes whatever on the right of way under the track.

*Re-direct Examination.*

We have never paid any tax on the real estate
396 under this particular track. We sometimes fail to pay taxes on property that belongs to us and some-

times we pay them on property that doesn't belong to us. When we don't pay taxes we should pay, the matter is called to our attention, but nobody says anything about it when we pay more than we should.

*Re-cross Examination.*

397 The representatives of the Edison Company did make a commitment to pay the license fees under the 1924 ordinance. They told me that they had undertaken to pay up to $700 a year, which was the estimated charge at that time. Later on when the ordinance was passed at $1400, we protested, but there was nothing we could do about it. There was a commitment by the Gas Company in connection with the Alton acceptance of this $1400 ordinance when I was in Mr. Cook's office, as I testified. Mr. Cook represented the Gas Company. I had
398 nothing to do with the ordinance charge made by the City on this track.

399 J. A. BEHRLE, a witness on behalf of petitioner, was sworn and testified:

*Direct Examination.*

My name is J. A. Behrle, and I am General Freight Agent of the Alton Railroad. I have been in the traffic department of the Alton and its predecessors for 32 years. I am familiar with the rates of the Alton and the application of those rates to the industries served by the track here involved. In the
400 case of rates on both state and interstate traffic, the tariff lists the Heldmaier Company, the Gas Company and the Moulding-Brownell Company as industries on the Alton Railroad. The tariff provides for

the application of Chicago rates to and from those industries. To cancel the rates maintained by the Alton on state and interstate traffic to and from the industries located on this track, it would only be necessary to eliminate the industries from the directory of industries in the tariff. It would only require the filing of a supplement to the tariff.

*Cross Examination.*

The industries I have mentioned have rates on all classes and commodities in state and interstate traffic. Those industries get the Chicago rate, which is the same as the rate to team tracks. We have team tracks at Harrison Street and Summit, and a substantial amount of carload traffic is delivered upon them. The Chicago rate also applies on team-track deliveries. Our team tracks at Harrison Street are only available to the Alton Railroad Company, and not to other railroads. A carload of coal could be unloaded at the Harrison Street tracks on the Chicago rate if the Alton received the linehaul to Chicago. We handle business to and from the industries, however, without considering the linehaul. If another railroad gets the linehaul we have to pay it. The Edison Company is shown as located on Alton rails at 25th Street and Mary Street, which seems to be a location on the track here in issue. The industries on the Alton Railroad in Chicago are listed in Tariff No. 22-Y, and, generally speaking, they all take the Chicago basis of rates. (Further hearing of case continued until April 6, 1936.)

Report of proceedings had April 6, 1936, on the adjourned hearing before the Illinois Commerce Commission in its Docket 24391, "Petition of The

Alton Railroad Company, etc." Appearances same as before.

411 Mr. Towner: At the last hearing reference was made to the standard side track contract of the Alton Railroad. If there is no objection I will offer a copy of the contract as an exhibit. (Said document
412 received in evidence, marked "Petitioner's Exhibit 19.")

There was also reference at the last hearing to the Final Decree in The Chicago and Alton Railroad Company receivership. I have had a copy made of part of that Decree showing the title, recitals and the paragraphs relating to the renunciation of contracts. I will offer that as Petitioner's Exhibit 20. (Said document received in evidence as "Petitioner's Exhibit 20.")

413 I also have a copy of order entered by Judge Wilkerson on March 22, 1935, in the Chicago and Alton receivership proceeding, extending the time of the Alton Railroad Company in which to renounce contracts up to July 18, 1936. (Said document offered and received in evidence, marked "Petitioner's Exhibit 21.")

418 I have had reproduced those pages of the Road Master's book which Mr. Cardy asked to have reproduced. I now hand him seven copies of those pages.
420 (Said document offered and received in evidence as "Respondent's Exhibit 1.")

421 JOHN T. CRAVEN, a witness on behalf of the Peoples Gas Light and Coke Company, was sworn and testified:

*Direct Examination.*

My name is John T. Craven. I am Chief Operating Engineer of the Peoples Gas Light and Coke Company. I have been connected with that Company for 25 years and am familiar with the switch track shown in yellow on Petitioner's Exhibit 1. The Gas Com-
422 pany has a plant on the lots marked 5, 6 and 7 in the subdivisions of blocks 3 and 4, as shown on that map. It is a distribution station. The Gas Company also has a plant on lot 5 in blocks 5 and 6, as shown on Petitioner's Exhibit 1. That plant is a storage holder. The Gas Company also has a plant located on lots 1 to 7 in blocks 7, 8 and 9, as shown on Peti-
423 tioner's Exhibit 1. That is a gas manufacturing plant which is not now operated. In years past this track was used extensively for supplying that plant with coal and coke. The traffic at that time averaged about 10 cars a day, but the operation decreased
424 around 1923. That plant is now used for standby and emergency operation. There has not been much traffic to or from it. It is expected to use the plant in the future, at which time the demand for railroad service will increase. The switch track here involved is necessary to the business of the Gas Company at
425 these various plants. There is very little service to the distribution plant now.

*Cross Examination.*

The Gas Company wants this switch track maintained at those plants so it can be operated when necessary. The portion of the track which lies in

lot 5 of blocks 5 and 6, and also that portion west of Loomis Street, as shown on Petitioner's Exhibit
426 1, is maintained by the Gas Company. I should say that that portion of the line west of the east line of Loomis Street is maintained by the Gas Company. The tracks shown in white on lots 5, 6 and 7 in blocks 3 and 4 are maintained by the Gas Company, but the line shown in yellow on those lots is maintained by the Alton. The Alton also maintains the track in yellow east of the west line of Loomis Street. The Gas Company is willing to maintain and stand a proportionate share of these tracks. We are wil-
427 ling to stand our share of the maintenance as between the Gas Company and the other industries served by the track. That offer applies to the tracks shown in yellow, as well as to the tracks shown in white. The Gas Company is also willing to pay its same proportion of the ordinance fees imposed by the City of Chicago for the crossing of these tracks over various streets and alleys. The Gas Company owns the track shown in yellow, a portion of which is located on property owned by the Gas Company. I am not sure just how much of the property on which it is located belongs to the Gas Company, but the
428 lots I have mentioned belong to the Gas Company. I do not know about the ownership of the track across the Edison Company property or the property of Moulding-Brownell or the Heldmaier Stone Company. The Gas Company paid for the construction of the track. It is my understanding that the Gas Company owns the lots which this track crosses from the point where it leaves Stark Street until it reaches Hillock Street. We are willing to
429 pay our proportionate part of the expense if the Railroad is not required to do it, but we would prefer to have the railroad required to do it. I do

430 not know the approximate length of track between Stark Street and Throop Street. Mr. Hoagland says it is about 1800 feet. The Gas Company has been operating the plant to which I refer for more than 25 years, and operated it up to 1923. The Alton served the plant over this track all that time. The
431 Alton also extended the track to various industries such as Moulding-Brownell and Heldmaier Stone. I know of no agreements between the Gas Company and the other industries when the track was extended. I am not sure that the Alton had the right to extend track to serve other industries. When I
432 say the Gas Company would stand its proportionate share of expense, I feel that is something the industries would work out among themselves.

433 M. R. HOAGLAND, a witness for petitioner, called for further cross examination, testified:

I think that the distance of this track from Stark Street to Throop Street is about 1700 or 1800 feet. That is from the connection at Stark Street to the easterly line of Throop Street. The track crosses
434 Stark Street and Mary Street and the alleys, or three streets and two alleys in all. The track shown in yellow on Exhibit 1 was not extended to serve the Heldmaier Stone Company, but was extended prior to the construction of that plant. That track was
435 extended through blocks 5 and 6 as early as 1885, but the Heldmaier track was not constructed until 1894. By the Heldmaier track I mean the white track extending in an arc from the yellow track in lot 1 in blocks 5 and 6. The part of the track colored yellow on Petitioner's Exhibit 1 was constructed

many years before. To reach over into the Haldmaier property, or Lot 1, would require an extension of about 600 feet beyond the spur serving lots
436 5, 6 and 7 in blocks 3 and 4. The first spur leading into the Moulding-Brownell Company would require about 100 feet of track, and the second would require 300 or 350 feet. In order to get into the Heldmaier and Moulding-Brownell plants from the spur leading off to the Gas plant, Throop Street would have to be crossed, in addition to those I have named.
437 It is about 600 feet or 650 feet from the Moulding-
439 Brownell spur to the west side of Loomis Street. Of the two spurs leading off the track shown in yellow on Exhibit 1 and serving the Moulding-Brownell Company, only one is covered by a contract. So far as I know, both tracks are being used. The white track extending off the yellow track on Exhibit 1 in lot 3 to the Moulding-Brownell Company is maintained by that Company from the point of clearance.
440 The Alton has maintained that track between the point of switch and the point of clearance. The Alton is also maintaining the track beyond the connection of the track shown in white on lot 3. On Exhibit 10 the Moulding-Brownell track is shown in green, and the Moulding-Brownell Company was
441 required to maintain it. The portion shown in red on that exhibit is maintained by the Alton. I don't know just how the Moulding-Brownell came into that contract, except as successor of the American Sand
442 and Gravel Company. I understand Moulding-Brownell is the successor of the American Sand and Gravel Company. In the case of the track serving the Heldmaier Company in lot 1, as shown on Exhibit 1, the Alton maintains the turn-out and any-
443 thing done on the Heldmaier property is paid by

that company. I think the tracks serving the Moulding-Brownell Company are maintained by the forces of that Company, as they constructed their own
446 tracks. I know what the main line of the Alton is and what the ordinary turn-out leading into an industry is. On Respondent's Exhibit 1 all tracks headed "Permanent Side Tracks" are shown on pages 180 to 192 and were owned by the Railroad.
447 That is a list of tracks existing in 1898, and many of them are no longer in existence. The Alton owns many tracks built to serve industries, but in almost all instances the cost of maintenance is borne by the industry. The contracts in effect with respect to
448 these tracks would control.

*Re-direct Examination.*

So far as I know, there is no agreement relating to the maintenance of the track serving the Heldmaier Stone Company. I think the track was built
449 in 1894. Our records show that the Heldmaier Company paid for it. The Railroad does not maintain the track shown in white on Petitioner's Exhibit 1, leading to the plant, but it does maintain the track from the point of switch to the point of clearance. We have many side tracks on the Railroad serving industries where the track not only belongs to the Railroad but is located entirely on its right of way.
450 Those tracks might be of substantial length. In other cases we build side tracks off our right of way under contract and retain ownership of the track and track material. In all those cases it is usual to enter into a side track agreement in the form of Petitioner's Exhibit 19, even though the track materials belong to the Railroad and the track is built

off the right of way. In those cases the provisions of the contract relating to maintenance, easements, etc., all apply.

J. L. HODGSON, a witness for Moulding-Brownell Company, was sworn and testified:

*Direct Examination.*

My name is J. L. Hodgson and I am Traffic Manager of the Moulding-Brownell Corporation. That Company is a producer and jobber of building material and coal. It owns a plant and property at 26th Street and Throop Street, as shown on Petitioner's Exhibit 1, and handles building material and coal at that point. I was formerly connected with the American Sand and Gravel Company, which was merged in the Moulding-Brownell Company. I was with it for 24 years and have been 5 years with Moulding-Brownell. The two companies were merged in 1930 and I became Traffic Manager of Moulding-Brownell. The approximate investment of Moulding-Brownell Company at the plant on Throop Street is $100,000. The plant has been operated since 1924, and is served by the Alton Railroad. The Moulding-Brownell plant has a spur track leading from the track shown in yellow on Petitioner's Exhibit 1, where loaded and empty cars are spotted. During the operation of the plant our Company has complied with the terms and conditions of the contract under which the track was built. Practically all of the traffic to that plant is inbound and consists of cement, clay tile, coal, gypsum tile, lime, plaster, sand and gravel. That is traffic coming to

Chicago for delivery at the plant. I have prepared
456 a statement showing the number of carload shipments received at that plant in 1933, 1934 and 1935. (Said document offered and received in evidence,
458 marked "Respondent's Exhibit 2.") The revenue received by the Alton, as shown on this Exhibit, is purely an estimate. The total for 1933 was approximately $37,000, for 1934 approximately $25,000, for 1935 close to $27,000. We maintain our
459 own track. We have no rail service at this plant, except that given by the Alton over the track shown in yellow on Petitioner's Exhibit 1. I understand
460 the movement at the Heldmaier plans is approximately 100 cars per year. That plant is adjacent to that of the Moulding-Brownell Company and there is a switch track extending into it from the track shown in yellow on Petitioner's Exhibit 1. I would
461 say there are 40 or 50 retail sand and gravel plants in the Chicago switching district with which our Company competes. Generally speaking, the same
462 rate applies on traffic to all of those industries from the various coal fields in Illinois and Indiana. Most of those rates are not increased by any charge in the Chicago switching district, but some of them have an arbitrary added to the Chicago rate. Our
463 plant has published tariff rates for inbound and outbound movements. We have about 8 to 15 cars a day into the plant, principally coal. That coal is locally distributed in the neighborhood. Subsequent
464 to the hearing in the case involving the complaint of the Moulding-Brownell Company a proposition was made by the Alton Railroad Company to the shippers with reference to the maintenance of the track shown in yellow on Petitioner's Exhibit 1. That was about six months ago. I have a letter from

465 the attorneys of the Alton Railroad Company relating to this matter. (Said document offered and received in evidence, marked "Respondent's Exhibit 3.") That exhibit is a copy of a letter dated July 8, 1935, written by Mr. Cardy and addressed to the attorney for the Railroad Company at Chicago.

Mr. Towner: I object to the exhibit, on the ground it is self serving and immaterial.

468 *Cross Examination.*

It is worth something to the Moulding-Brownell Company to keep the present service over the track
469 here involved. I cannot say whether we are willing to pay any maintenance charges on the track shown in yellow on Petitioner's Exhibit 1 without talking to my superior officers. I do not know what their attitude would be if given to understand that the railroad service would cease. I do not know what they
470 would do. I take it, however, we are willing to participate in the payment of the ordinance fee. I do not know whether or not Petitioner's Exhibit 12 was
471 executed by the Alton. I have no knowledge of that and have no executed copy of the agreement. The Alton revenue shown on Respondent's Exhibit 2 is merely an estimate. I have no knowledge of the division of rates, but I assumed that the Alton received
472 30¢ a ton. That is switching revenue and not a division of the line haul rate. That is true of practically all of those figures. The coal shown on the exhibit comes from various points, some of which are in central Illinois. The Alton has a line from central Illinois to Chicago, and if it hauled the coal from central Illinois, its revenue would be more
473 than $15. Most of this coal came in over the Illinois

Central from the southern part of the State, so that the fact is the Alton maintains a switch track to make delivery of coal hauled to Chicago by other railroads. The Alton gets no line haul on the coal, but it does on some of the other commodities. It
474 gets some cement, coming from LaSalle at Joliet, and some gypsum tile at Peoria. On the cement I have estimated 40¢ a ton, that being my estimate of the Alton division from Joliet. All the balance of the charges shown are switching charges. The Alton
475 would get more than the $9.00 a car shown on gypsum tile if it hauled from Peoria, but I think practically everything is on a switching charge. With very few exceptions, the Alton is maintaining the terminal for the benefit of the roads getting the line haul rates. Coal is quite an important commodity to our Company. We compete with all distributors
476 of coal in Chicago, including John Bigane. He is a coal distributor with whom we compete.

*Re-direct Examination.*

All of the coal moving to Chicago comes on a through rate from the mines, and out of that through rate the railroad delivering the cars to the industry gets a proportion of the through rate which I have
477 estimated. I estimated the Alton's line-haul revenue on cement at 40¢ a ton. The Illinois Central has its tracks near to this particular track in question, but does not reach our plant. The whole thing is done under the published tariff rates, but the Illinois Cen-
478 tral does not use that track. Its track is on the other side of the Alton main line and it has no connection to handle carload freight to the tracks here involved.

479 M. R. HOAGLAND, a witness for petitioner, was recalled and testified:

*Direct Examination.*

I am familiar with the Vilija Company. It is a coal company located in Chicago and is served by
480 the Alton Railroad. It receives coal at its plant and thereafter distributes it. It is served by a side track extending from the main line of the Alton to its plant at Spaulding Avenue. The Vilija Company pays the entire cost of maintaining that track, some of which is located off the right of way of the Alton. It even maintains that part of the track on the Alton right of way. The track does not cross any public streets or alleys.

481 *Cross Examination.*

The bins of the Vilija Company are about 80 feet from the Alton main line. The agreement between the Alton and the Vilija Company is substantially the same as our standard industrial agree-
482 ment. There is no agreement between the Moulding-Brownell Company and the Alton, but there is an agreement with the American Sand and Gravel Company. The maintenance provisions of that agreement are in line with our standard practice. The Vilija Company agreement is different in that that company maintains all of the track.

483 *Re-direct Examination.*

The Alton also serves in the Chicago district the John Bigane Coal Company, the F. A. Wood Coal Company and the F. A. Wood Company, which is a

tenant of the General Cullet Company. Those are coal yards. Bigane bears the entire expense of maintaining its track and the Wood Company bears the expense of maintaining their track up to the
484 point of clearance. In all these cases the industry procured the right of way for the construction and operation of track, including the rights across public streets and alleys. One of these tracks crosses Albany Avenue and a crossing of the street is main-
485 tained. The matter of getting the ordinance to cross that street was a matter for the industry, which obligated itself to pay the rental and the maintenance of the track.

Examiner Daley: Does that conclude the matter?

Mr. Towner: Yes.

488 Examiner Daley: It is understood that the briefs in this matter shall be filed on or before May 4th. Let the record show that the case is marked heard and taken, briefs to be filed by May 4, 1936.

490 Brief on behalf of Alton Railroad Company filed with the Illinois Commerce Commission in its Docket 24391 on April 18, 1936.

492 Brief on behalf of Peoples Gas Light & Coke Co. filed with the Illinois Commerce Commission in its Docket 24391 on May 9, 1936.

494 Brief on behalf of Moulding-Brownell Co. and Heldmaier Stone Co., filed with the Illinois Commerce Commission in its Docket 24391, on May 11, 1936.

508 Statement on behalf of Commonwealth Edison Co., filed with the Illinois Commerce Commission in its Docket 24391, on May 13, 1936.

512 Order entered May 15, 1936, setting case for oral argument on May 27, 1936.

513 Reply brief on behalf of Alton Railroad Co., filed with the Illinois Commerce Commission in its Docket 24391, on May 22, 1936.

514 Case argued orally before the Commission May 27, 1936, and taken under advisement.

515 Petitioner's Exhibit 2, Docket 24391, being copy of agreement dated November 15, 1900, between The Chicago and Alton Railway Company and Peoples Gas Light and Coke Company. Recites construction and previous operation of switch tracks here involved, extending from railroad of the Railway Companyand terminating in Lot 3 of Block 8, in Canal Trustees' Subdivision, as shown on blueprint attached to agreement; that Gas Company is owner of said Lot 3 and Lots 4 and 5 in Block 8 and is the lessee of Lot 6 in Block 8, and has requested the Railway to extend said switch track as shown in red on said blueprint. Railway agrees to construct the extension shown in red upon said blueprint, and Gas Company agrees to refund to the Railway the cost thereof, if the Railway shall at any time thereafter be prevented from using the switch track. Gas Company agrees to join with Railway Company in making application to the City of Chicago for vacation of Mary Street, upon the request of the Railway.

516 Petitioner's Exhibit 3, Docket 24391, being copy of ordinance passed by the City Council of Chicago on November 2, 1903. Ordinance recites the existence for many years of switch track here involved, built on private property and extending from

a point on Lot 32 of sub-lot 1 in Maher's Subdivision of Lots 1 and 4, Block 22, in Canal Trustees' Subdivision of south fractional Section 29, Township 39 North, Range 14, East of the Third Principal Meridian, to a point in Lot 6 in the subdivision of Blocks 7, 8 and 9 in Canal Trustees' Subdivision of south fractional Section 29, Township 39 North, Range 14, extending at grade across intervening streets and alleys, and the necessity of elevating part of said switch track in order to maintain its existing connection with the main line of
517 the Railroad Company. Ordinance requires the Railroad Company to partly elevate the switch track from its connection with the track of the Railroad Company to a point 100 feet east of the west line of Lot 3 in the subdivision of Blocks 3 and 4; to continue thence on a descending grade and cross Throop Street, Loomis Street and Cologne Street at grade. Also requires elevation upon steel, iron
518 or wooden trestles over the streets, and subways beneath the track where it extends over Mary Street and Hillock Avenue, and prescribes specifications
519 for such subways. Also requires that work of elevating track be commenced before May 1, 1904, and be completed before December 31, 1904; and provides that rights and privileges granted by the ordinance shall cease in twenty years with respect to the elevated portion of track, and shall cease at the end of ten years with respect to the unelevated portion of track. Also requires Railroad to keep Throop Street and Loomis Street at point of crossing in good repair, to pay to the City of Chicago annually the sum of $300 during each year of the life of the ordinance, beginning January 1, 1904, and limits use of track across Throop and Loomis

520 Streets to hours between 2 A. M. and 4 A. M. and 2 P. M. and 4 P. M., not more than three trains to pass over the track during the designated hours, at a maximum speed of 10 miles an hour.

521 Petitioner's Exhibit 4, Docket 24391, being copy of agreement dated November 1, 1904, between Chicago and Alton Railway Company, Peoples Gas Light and Coke Company and Commonwealth Electric Company. Recites passage of ordinance of City of Chicago November 2, 1903 (Pet. Ex. 3), requiring elevation of switch track here involved, the track being shown upon blueprint attached to the contract; that the ordinance was obtained by The Chicago and Alton Railroad Company at the instance of and for the benefit of the Gas Company and the Electric Company, which own nearly all of the land upon which the track is located, and that the Railroad Company has assigned all rights and privileges under the ordinance to the Gas Company and Electric Company; that the Gas and Electric Companies desire the work of elevating the track to be done by the Railway Company, and that it be thereafter maintained by the Railway Company. Agreement provides that Railway Company shall furnish the necessary material and labor and elevate the tracks in accordance with the ordinance
522 requirements; that the Railway Company shall construct, upon request of the Electric Company, a spur track starting at a point on the switch track about 100 feet east of the west line of Lot 3 and running east about 300 feet parallel to Cologne Street, as shown in blue upon the blueprint; that the Electric Company reserves the right to change the construction of the spur track to be built, from

embankment to timber trestle; that upon the elevation of the track at an estimated cost of $37,090.00 the Gas Company and Electric Company shall each pay to the Railway Company one-half of that cost;
523 that for 5 years from and after January 1, 1905, and thereafter until terminated upon one year's notice, the Railway Company shall be permitted the sole use of the switch track for the purpose of handling the business of the Gas and Electric Companies, and that of such other industries as may be located upon the track; that the Gas Company will use its best efforts to procure the right to maintain the track upon property not owned by it or the Electric Company; that during said 5 year period and so long thereafter as the Railway Company shall be permitted to solely use and operate the switch track, it will maintain, renew and repair it, and shall pay all expenses arising from its use and operation; that nothing in the contract shall require the Railway Company to carry out any requirements contained in future ordinances of the City of Chicago; that the Railway Company
524 shall handle all inbound and outbound shipments of the Gas Company or Electric Company; that the Gas Company and Electric Company assume and agree to carry out all obligations of The Chicago and Alton Railroad Company and the Railway Company to the City of Chicago under the ordinance of November 2, 1903, including the obligation to make the annual payment to the City of Chicago, and that the agreement shall be binding upon the successors and assigns of the parties.

525 Petitioner's Exhibit 5, Docket 24391, being blueprint attached as "Exhibit 1" to Petitioner's Ex-

hibit 4, agreement dated November 1, 1904, showing the track involved in yellow, red and green.

526 Petitioner's Exhibit 6, Docket 24391, being copy of assignment dated November 1, 1904, by Chicago and Alton Railroad Company and Chicago and Alton Railway Company to Commonwealth Electric Company and Peoples Gas Light and Coke Company, of all rights, privileges, permissions and benefits granted to The Chicago and Alton Railroad Company by ordinance of the City Council of the City of Chicago passed November 2, 1903 (Pet. Ex. 3), and relating to the elevation of the switch track here involved.

527 Petitioner's Exhibit 7, Docket 24391, being copy of agreement dated December 1, 1907, between Chicago and Alton Railroad Company and the Commonwealth Edison Company. Recites succession of Chicago and Alton Railroad Company to Chicago and Alton Railway Company and Commonwealth Edison Company to Commonwealth Electric Company; partial elevation of track here involved under agreement dated November 1, 1904 (Pet. Ex. 4); and desire of Edison Company that Railroad Company extend the trestle at the southwest corner of Lot 4 in Blocks 3 and 4 of Canal Trustees' Subdivision of Section 29, Township 39 North, Range 14, East of the Third Principal Meridian, in order to provide for the construction of a subway under the switch track. The agreement provides that the Railroad shall do all the work and furnish the material necessary to extend the trestle, the location of the extension being shown in red upon a blueprint at-
528 tached to the agreement; that the Edison Company shall pay the cost of said work and remove so much

of the existing embankment as may be necessary for the construction of the subway, and maintain the trestle at its own expense; that the Edison Company will release the Railroad Company from all claims for loss or damage occasioned by the extension, and that the agreement shall not affect the rights and liabilities of the parties under the prior agreement of November 1, 1904 (Pet. Ex. 3).

529 Petitioner's Exhibit 8, Docket 24391, being blueprint attached to agreement of December 1, 1907 (Pet. Ex. 7), showing proposed extension in red.

530 Petitioner's Exhibit 9, Docket 24391, being copy of agreement dated April 5, 1924, between William W. Wheelock and William G. Bierd, as Receivers of the property of The Chicago and Alton Railroad Company and American Sand and Gravel Company. Recites desire of Gravel Company to have the Receivers construct a switch track as shown by blueprint attached to the agreement. Agreement provides that Receivers will construct the switch track; that the Gravel Company grants easement to the Receivers for the construction, maintenance, operation and repair of the portion of track located upon the premises of the Gravel Company, and will secure to the Receivers the right to construct, maintain and operate the track on property not owned by the Gravel Company; that the Receivers will furnish the material and construct the track from point of switch to clearance point, as shown in red on blueprint, at the expense of the Gravel Company; that the Gravel Company will furnish the material and construct the track beyond the point of clearance, as shown in green on the blueprint;
531 that the Receivers will refund the cost of the track

from point of switch to point of clearance, at rate of $2.00 per car on all shipments on which the revenue is $15 per car or more; that the part of switch track shown in red shall be owned and maintained by the Receivers, and that the part shown in green shall be owned and maintained by the Gravel Company; that the Receivers shall have the right to ex-
532 tend the track to serve other industries; and that agreement may be terminated by either party on 90 days' notice.

534 Petitioner's Exhibit 10, Docket 24391, being blueprint attached to contract dated April 5, 1924 (Pet. Ex. 9) showing projected track in red and green.

536 Petitioner's Exhibit 11, Docket 24391, being copy of ordinance passed by the City Council of the City of Chicago on December 10, 1924. Authorizes Chicago and Alton Railroad Company to maintain and use the switch track here involved as then constructed
537 for a period of 20 years following November 2, 1923, the Railroad to keep the streets under the track in good condition and pay to the City of Chicago compensation in the amount of $1400 per year, beginning November 2, 1923. Further provides that if default be made in the payments, the privileges granted by the ordinance may be revoked or the ordinance repealed; that the grantee shall execute a bond to the City of Chicago for $10,000, conditioned upon the faithful observance and perform-
538 ance of the provisions of the ordinance; that if the bond is not kept in full force, the privileges granted by the ordinance shall cease; and that the ordinance shall be in effect from and after its passage, if a written acceptance is filed with the City Clerk within 60 days thereafter.

539 Petitioner's Exhibit 12, Docket 24391, being copy of agreement dated April 7, 1932, between The Alton Railroad Company and Moulding-Brownell Corporation. Recites desire of Moulding-Brownell to have the Railroad construct a switch track as shown in red upon blueprint attached to contract. Agreement provides that the Railroad shall furnish the materials for and construct and maintain the track from point of switch to the heel of the frog, at the expense of the Moulding-Brownell Company, and that Moulding-Brownell Company shall furnish the materials and construct and maintain the remainder of the switch track at its own expense; that Moulding-Brownell grants easement to the Railroad Company for the repair, maintenance, operation and use of said switch track; that the ownership of the track between point of switch and heel of frog shall be with the Railroad, and ownership of balance of track shall be with Moulding-Brownell; that Mould-
540 ing-Brownell will indemnify the Railroad against various liabilities; that agreement shall be binding on successors and assigns of parties, and may be terminated by either party on 90 days' notice.

541 Petitioner's Exhibit 13, Docket 24391, being blueprint attached to Petitioner's Exhibit 12, Contract of April 7, 1932, showing track to be constructed in red.

542 Petitioner's Exhibit 14, Docket 24391, being copy of ordinance of the City Council of the City of Chicago passed May 9, 1934, reducing compensation for maintenance of track here involved from $1400 a year, as fixed by ordinance passed December 1[illegible], 1924, (Pet. Ex. 11) to $700 a year, beginning November 2, 1932.

543 Petitioner's Exhibit 15, Docket 24391, being copy of election of The Alton Railroad Company, dated March 26, 1936, not to assume agreement dated November 1, 1904, between The Chicago and Alton Railway Company, the Peoples Gas Light and Coke Company and Commonwealth Electric Company; said election being entitled in the case of "*The Texas Company, et al., Complainants* v. *The Chicago and Alton Railroad Company, et al., Defendants*, In Equity, Consolidated Cause No. 2940." in the District Court of the United States, for the Northern District of Illinois, Eastern Division.

546 Petitioner's Exhibit 16, Docket 24391, consisting of copies of letters relating to track here involved. Letter dated February 15, 1910, from Vice-President of Edison Company to Chief Engineer of Chicago and Alton Railroad Company, advises that operating agreement can only be terminated on one year's notice from Edison Company or Gas Company, and that Gas Company has no development in mind that would permit it to terminate agreement. Letter
547 dated February 7, 1910, from Chief Engineer of Edison Company to Chief Engineer of Chicago and Alton Railroad Company, advises that he will take up with his officials request of Railroad Company for continuation of right to use the track here in-
548 volved for the future. Letter dated January 26, 1910, from Chief Engineer of Railroad Company to Chief Engineer of Edison Company, calls attention to fact that exclusive operating rights of Railroad over track involved ended January 1, 1910, subject to termination thereafter upon notice, and requests assurance of right to operate over track for term of years.

549 Petitioner's Exhibit 17, being copy of letter dated January 31, 1911, to Chief Engineer of Chicago and Alton Railroad Company from James A. Hair, representing private owners, complaining that Edison Company and Gas Company decline to sign contract providing for switching over track involved for other industries, unless they are paid $12,000, and states that property owners decline to pay the $12,000.

551 Petitioner's Exhibit 18, Docket 24391, being statement of maintenance costs on track here involved. Shows running repairs, including material and labor, as $998 per year; and reconstruction costs, including relay of rail for 3 years, reconstruction of steel bridges for 18 years and reconstruction of trestles for 3 years as $3,912; together with taxes of $383 per year.

552 Petitioner's Exhibit 19, Docket 24391, being form of standard industry track agreement used by The Alton Railroad Company. Under this agreement, provision is made for the ownership of the track, as the case may be; the industry grants the railroad an easement for the construction, maintenance, operation and repair of the track upon the industry's property, and undertakes to secure for the railroad the right to maintain the track upon property
553 of third parties; the railroad agrees to maintain the track and the industry agrees to make payment therefor; the railroad has full control of the track and the right to use it for general purposes, and also the right to extend it to other industries; the industry agrees to comply with the rules of the rail-
554 road and all requirements at law, etc., with respect to clearances and the use of the track; the industry agrees to indemnify the railroad against claims

555 for loss by fire and all loss, damage or injury, except that resulting from negligence of the railroad; the industry has no right to assign the agreement without the consent of the railroad and it is binding upon the successors, assigns, etc., of both parties. The agreement is terminable by either party upon sixty days' notice to the other party, and terminates in any case if the railroad loses the right of opera-
556 tion over the track; and upon such termination, the railroad has the right to remove such part of the track as is owned by it.

557 Petitioner's Exhibit 20, being extracts from Final Decree of Foreclosure and Sale entered in the case of *"The Texas Company, et al.* v. *The Chicago and Alton Railroad Company, et al.*, Consolidated Cause No. 2940," pending in the District Court of the United States, for the Northern District of Illinois, Eastern Division. The Decree recites that The Chicago and Alton Railroad
558 Company was formed in 1906 and operates certain lines of railroad in Illiniois; that any purchaser of
559 its property, as described in the Decree, shall have the right, within one year after delivery of a deed therefor, to elect not to assume or adopt any lease, traffic, trackage, terminal, crossing or operating agreement or other contract, not fully performed, which was made by The Chicago and Alton Railroad Company; that such election shall be made by instrument in writing, signed by the purchaser of such properties and containing a general description of the contract which it is elected not to assume, such election to be filed with the Clerk of the Court. The Decree further provides that no user of rights shall preclude such a purchaser in respect of such election.

560 Petitioner's Exhibit 21, Docket 24391, being copy of order entered in the case of "*The Texas Company, et al.* v. *The Chicago and Alton Railroad Company, et al.*, Consolidated Cause No. 2940," in the District Court of the United States, for the Northern District of Illinois, Eastern Division. The order extends to July 18, 1936, the time of The Alton Railroad Company, the successor in interest of the purchasers of the property of The Chicago and Alton Railroad Company, to elect not to assume or adopt contracts, agreements, etc., of The Chicago and Alton Railroad Company.

561 Respondent's Exhibit 1, Docket 24391, consisting of 18 sheets, listing various side tracks of The Chicago and Alton Railroad Company, as permanent side tracks, temporary side tracks or private side tracks. The lead to the Cologne Street track (the
576 track here involved) is shown as a permanent side track 150 feet long; the Cologne Street main track (the track here involved) is shown as a private side track 3537 feet long.

579 Respondent's Exhibit 2, Docket 24391, being statement of shipments received by Moulding-Brownell Corporation at Eleanor and Loomis Streets Yard during 1933, 1934 and 1935; shows 2383 cars received in 1933; 1657 cars received in 1934; and 1757 cars received in 1935. The estimated Alton revenue on these cars is shown as $37,243 in 1933, $25,124 in 1934 and $26,612 in 1935.

580 Respondent's Exhibit 3, Docket 24391, being copy of letter dated July 8, 1935, addressed to Guy Gladson, 38 South Dearborn Street, Chicago, Illinois. The letter is unsigned, but states that the writer is in receipt of a letter from the Moulding-Brownell

Corporation, saying that a division of the franchise tax to the City on the C. & A. track is agreeable to it. The division is stated as being C. & A. $100, Moulding-Brownell Corporation $200, Gas Company $300, Heldmaier $100. The letter suggests that the agreement be made effective January 1, 1935.

583 Copy of order of Illinois Commerce Commission made on October 28, 1936, in its Dockets 24391 and 22201, Consolidated.

594 Copy of order mailed to all parties of record on October 30, 1936. Petition of The Alton Railroad Company for rehearing filed November 28, 1936.

595 Copy of petition of The Alton Railroad Company for rehearing, filed with Illinois Commerce Commission on November 28, 1936, in its Dockets 24391 and 22201, Consolidated.

596 Order entered December 9, 1936, by Illinois Commerce Commission granting rehearing. Order entered December 11, 1936, setting case for further hearing on January 12, 1937.

597 Notice of filing of copy of reply of Peoples Gas Light and Coke Company to petition of The Alton Railroad Company for rehearing in Dockets 24391 and 22201, Consolidated, on December 21, 1936.

599 Copy of reply of the Peoples Gas Light and Coke Company to petition of The Alton Railroad Company for rehearing, filed with Illinois Commerce Commission, on December 22, 1936, in its Docket 24391.

600 Consolidated cases 22201 and 24391 before Illinois Commerce Commission called for hearing on January 12, 1937.

601 Report of proceedings had January 12, 1937, on the hearing before the Illinois Commerce Commission in its Dockets 22201 and 24391. Appearances same as before.

605 Mr. Henry: I understand that a petition for rehearing in this case has been granted and this proceeding is resumed pursuant to the petition for rehearing. I suggest that The Alton Railroad Company proceed.

606 M. R. HOAGLAND, a witness on behalf of The Alton Railroad Company, testified:

*Direct Examination.*

My name is M. R. Hoagland. I am an engineer for The Alton Railroad Company and am the same Mr. Hoagland who testified at the previous hearings The Alton Railroad Company has not paid to the City of Chicago the $700 license fee fixed by the ordinance covering the track here involved. The
607 payment was due on November 1st, last. The bond required under that ordinance has also been cancelled by The Alton Railroad Company. The track involved is in bad condition and the Moulding-
608 Brownell Company has asked us to put it in better condition. A large portion of the track is in need of relaying with rail. It is now laid with 80-pound rail, but when the rail is relaid it will be done with 90-pound rail. That additional weight of rail, under the rules of the Interstate Commerce Commission,
609 is considered as an addition to the property. The ten additional pounds of rail will be charged to additions and betterments, and the 80 pounds will

be charged to maintenance. If the track belonged to us, that additional weight of rail, amounting to 10 pounds, would be included in the value of the property of the Railroad Company. The trestle also is in need of relaying. It is of untreated timber and that timber is in a decayed condition. Our
610 practice would be to rebuild it with creosoted timber. The heavier weight of rail is now used by the railroad to eliminate danger and maintenance cost and would be necessary from both standpoints. Both
611 in connection with the rail relaying and in connection with the trestle reconstruction there would be some part of the cost which, under the accounting rules prescribed by the Interstate Commerce Commission, would be charged to additions and betterments, and would be added to the value of the railroad property, if the track belonged to it. That is
612 the part of the cost that we are supposed to capitalize. Also, the track leading to the Moulding-Brownell Company is partially blocked due to the unloading of material by that company. I am talking about
613 the main lead. The track now lies practically in a trench and catches a lot of water. In the future
614 it will be necessary to pick the track up and put in enough ballast so that the track will not be fouled. That additional ballast would also go into the addi-
615 tions and betterments account. At least the cost of acquiring the ballast and hauling it there would go into that account, if the track belonged to the Alton. The steel bridge over Hillock Street also needs work. The bridge is a steel girder span and the ballast is carried on plank flooring. The re-
616 placing of that timber flooring would cause a charge to additions and betterments, if the track belonged to the Alton, as the plank there now would be re-

placed with creosoted timber. The Alton Railroad has other spur or side tracks in Illinois similar to the track here involved, with spurs leading off them
617 and serving industries. We have a track on the east side of Halsted Street in Chicago with six tracks running off it to industries. The track is
618 similar in every respect to the one here involved. At Wann, Illinois, we have a switch track serving the Standard Oil Company, and off it are three spurs serving three other industries. At Springfield also we have a spur leading off our main track, and
619 serving five industries with a number of spurs. At Carlinville and Coal City we also have switch tracks with a number of spurs leading off them to serve industries. All these switch tracks are about comparable in length with the track here involved. The word spur is the common expression for tracks leaving the main track and extending out of other tracks.
620 I would designate all of these tracks, including the one here involved, as being spur or side tracks. It
621 is the common practice to call them that. I have been connected with the railroad since about 1909.
622 I only know what our records show with respect to the location of the Heldmaier Company and the Moulding-Brownell Company on the track here
623 involved. Our records show nothing on this point. We find no record of any industries being located on this track by The Alton Railroad or its predecessors, although it has had applications from industries for locations on this track. Thomas McGuane
624 & Company made application for such a location.
625 We advised them to get in touch with the Gas Company for permission to get service on the track. The question of the Alton's right to operate this track to serve industries other than the Gas Com-

pany came up in 1909, when we were attempting to
626 locate the Sun Oil Company on the track. There was such uncertainty in the minds of the management that the proposition was given up and the industry located elsewhere. At that time the matter was taken up with the Gas Company by the Alton. My sources of information are the official records of
627 the Alton in the Chief Engineer's office. I have
628 copies of those letters and documents with me. They are exact copies of the documents in the original files of the Alton with respect to this subject matter, and I had the copies made myself. (Said docu-
629 ments offered in evidence as Alton Railroad Company Exhibit No. 1 of January 12, 1937.)

Mr. Dines: We object to the offer.

630 The Witness: The matter of locating the Sun Oil Company on that track is discussed in this cor-
631 respondence, and I am able to say what the position of the Gas Company was on the matter. The matter was handled between the Real Estate Engineer of The Chicago and Alton Railroad and the Superintendent of the Gas Company, and perhaps others.

Mr. Cardy: We object.

Mr. Dines: We object.

632 The Witness: I was connected with the railroad in 1909 and know that George H. Ross was Executive Vice-President at that time and that W. H. Ross was Vice-President in charge of freight traf-
633 fic, and C. M. Larson was Real Estate Engineer. W. D. Taylor was also Chief Engineer, under whom I worked. The outcome of the matter was that

the Sun Oil Company located elsewhere, due to the fact that the Gas Company and the Edison Company insisted on a payment of $12,000 to allow outside industries to be served over the track.

634 *Cross Examination.*

If we were changing our main line from 80 to 90-pound rail, we would allocate the charge to various accounts, just as I said we would do in the case of this track, if the Alton owned it. My testimony
635 with respect to the condition of the track here involved did not relate to the spur tracks of the Moulding-Brownell Company, but the business of that Company moves over these tracks and over the trestle in question. There were some obstructions on the property of the Moulding-Brownell Company to interfere with the operation of their spur track when I was out there to inspect the track. I re-
636 ported the matter back to our office. The letter to Mr. Kemp dated in December, 1910, and contained in my Exhibit 1 of this date, stated that we desired to have a track in order that we might establish industries on the vacant lots south of Throop Street.
637 Those lots are the ones now occupied by Moulding-Brownell. This was not done to serve Moulding-Brownell or the American Sand and Gravel Company, as the latter Company did not locate there until fourteen years afterwards. Our records do
638 not show how the American Sand and Gravel Company got in there, or whether they went to the Gas Company. I did not produce at the last hearing a contract covering operation of the spur track serv-
639 ing Moulding-Brownell. The contract is dated in 1924—fourteen years after this other matter arose,

when the Edison Company and Gas Company attempted to get $12,000. I don't know under what conditions the American Sand and Gravel Company located there originally. I don't know whether we
640 secured permission for any industries to locate on this track. We always put the matter up to the industry itself to get permission from the Gas Company. So far as I know, we did not get authority from the Gas Company in 1924 to operate over this track to serve the American Sand and Gravel
641 Company. I formerly testified that the Alton had constructed a turnout for the track beginning in lot 4 as shown on Exhibit 5 and extending down toward the River in lots 5 and 6. I then testified that the Alton did pay for the extension of the track
642 into lot 6, and that from a point in lot 4 down into lot 6 our records showed that the Alton paid and that our ownership of that part of the track was not questioned. We were asked to extend that track by the Gas Company, and we now own that portion of it beginning in lot 4 of the subdivision of blocks 7, 8 and 9 to the stub end of the track adjacent to
643 the River bank. From my investigation I know that the ownership of that portion of the track is in the Alton and that the Alton paid for constructing it. I said that the Gas Company asked us to
644 make the extension. It was done for that Company, and yet the Alton owns and paid for the construction. To get to that piece of track we have to run over the rest of the track. The Gas Company formerly permitted an asphalt company to have service over that track, but I think that company
645 is there no longer. The Gas Company is the only company now served by that extension. The letter of September 17, 1910, contained in my Exhibit 1

of today, addressed to W. J. Knapp, was from C. M.
646 Larson, the Real Estate Engineer of the Railroad. That is the only letter purporting to be between the Gas Company and the Alton. I don't know that the copies of the others were ever sent to the Gas Company. I wanted to show by these letters the uncertainty that existed in the minds of the man-
647 agement of the railroad. The letter of Mr. Hair to W. D. Taylor, Chief Engineer of the Railroad, on January 31, 1911, should be considered, as it reflected dealings with the Gas Company. It is not, however, between the Gas Company and any other party.

648 Mr. Dines: We object to all of the letters designated as Exhibit 1 as of today, except the letter of September 17, 1910.

Mr. Henry: I think we will admit the letters for what they purport to be.

649 (Said document so offered as Alton Railroad Company Exhibit 1 of January 12, 1937, received in evidence.)

The Witness: A shipper did apply to the Alton for service over this track, the application coming through the Thomas McGuane Company. We told them they would have to get permission from the
650 Gas Company. That occurred after the prior hearings in this case had ended and while the matter was pending before the Commission, but it reflects the past practice of the railroad. In 1931 we told the American Barrel Company to get permission from the Gas Company if they wanted service on this track. The Gas Company ordinarily handled matters in connection with the track. The Ameri-

651 can Barrel Company reported back that they had secured permission, but the McGuane Company had
652 no dealings with me. I don't know what the Gas Company told them. I am familiar with the con-
654 tract of 1904. I knew there was a provision in that contract which, until it expired, gave the railroad the right to handle freight business of other industries besides the Gas Company and Edison Company over that track, but there is a 12-month notice that voids the provision after five years. I men-
655 tioned a number of other tracks approximately the same length of this track located in Illinois. I recall that one was constructed under a contract which required the industries to maintain the lead track
656 which served them. That is the one south of Springfield. In every instance the tracks lie on property of the Railroad Company and are owned by the Railroad. In the case of the track involved in this case the Alton owns the track to its right of way line. In the case of the track at Springfield, it is built on our property and we own the track and the
657 spurs leading off it to the right of way line. Beyond that, the industries own the spurs. In the case of
658 the Springfield track, it is about one-half mile long, all on our right of way. The whole spur is owned by the Alton until you get to the spurs leading into the industries. That is also true of the other tracks
659 which I mentioned. The main lead to the industries is on the Alton right of way. The track at Springfield, the track at Wann and the track at Halsted Street all cross public highways, but belong
660 to the Alton. The railroad does not maintain all of the tracks extending to the industries. We maintain the switching lead to the industries. Generally speaking, the railroad maintains the track owned

by it, but the general practice is for the industry to maintain that portion of the track on our right of way beyond the point of clearance and also the part of the track on its own property. I am familiar
661 with the spur of The Alton Railroad Company south of Lincoln and serving the Lincoln Sand and Gravel Company. The turn-out of that track and a portion of the track up to the right of way line is owned by the railroad, but outside the right of
662 way the ownership of the Gravel Company begins. Beyond the edge of our right of way the property is owned by people other than the railroad company. I think the track is about a mile or a mile and a half long, but I don't know that it crosses any public highway. I have never had to go down there.

663 Mr. Towner: That is all for us, Mr. Examiner.

Mr. Dines: We may have evidence to offer, but a two or three-day continuance will be sufficient.

664 The Examiner: The case will be continued until January 14, 1937.

665 Consolidated cases 22201 and 24391 called for hearing on January 14, 1937, and continued until January 27, 1937. Request made for oral argument on that date.

666 Report of proceedings had January 14, 1937, on the hearing before the Illinois Commerce Commission in its Dockets 22201 and 24391 Consolidated. Appearances same as before.

668 The Examiner: I understand The Alton Railroad Company has some additional evidence to present today.

669 Mr. Dines: We did not know the case was coming up for evidence today. I ask that the matter be continued until Mr. Cardy can be here.

670 The Examiner: We will hear the evidence and if Mr. Cardy wishes to cross-examine he will be given an opportunity later on.

Mr. Towner: Before going ahead I wish to make a statement with respect to the evidence. Petitioner's Exhibit 1, the blueprint attached to the petition, shows that part of this track west of Loomis
671 Street, particularly that part in lots 4, 5 and 6 of blocks 7, 8 and 9, is extended in a straight line. That end of the track was constructed under a contract in evidence as Petitioner's Exhibit 2, and the maps put in with that exhibit show that end of the track as constructed in a curve to the River. I wish Mr. Hoagland to testify on this matter.

672 M. R. HOAGLAND, called as a witness on behalf of The Alton Railroad Company, testified:

*Direct Examination.*

I am the same Mr. Hoagland who has testified before in this case. That part of the track here involved lying in lots 4, 5 and 6 of blocks 7, 8 and 9 was constructed under an agreement between The Chicago and Alton Railroad Company and the Gas Company dated November 13, 1900, and introduced in evidence as Petitioner's Exhibit 2. Petitioner's
673 Exhibit 5 shows the manner in which the tracks were built. I have testified that the track was not built on a curve to the River, as shown on Petitioner's

Exhibit 5, but I have since found that the tracks did extend down to the River, as shown on Exhibit 5. My previous statement that the track was constructed through these particular lots in a straight line,
674 as shown on Exhibit 1, is in error. At the present time the tracks lie in a straight line, as shown by Exhibit 1. Our records do not definitely show when the tracks were changed, but I know that the sharpness of the curve in the tracks as they were built under the 1900 agreement was such that cars could not get around the curve. For that reason the tracks were straightened out. When the track was built curving up to the River the cost of construc-
675 tion was paid by the Alton Railroad, but the tracks that the Alton paid for are no longer in existence. No portion of them, as shown on Petitioner's Exhibit 5, is now left. The tracks shown as curved on Exhibit 5 have been rebuilt in another location. I don't know who paid for the tracks in the position
676 in which they now lie. All that portion of the track here involved is within the plant of the Gas Company, which is surrounded by a fence. When I testified before, I said this portion of the track belonged to the Alton Railroad, and based that statement on the fact that we paid for the tracks as constructed under the agreement of 1900. That fact
677 led me to believe that the Alton owned that particular piece of the track. I find now that the track that was then built and paid for by the Alton is no longer in existence.

*Cross Examination.*

The fence enclosing the plant of the Gas Company does not prevent the passage of cars over the track. There is a gate in the fence fronting on Loomis

Street. The fence never has interfered with the operation, but the gate can be closed. There is a gateway into the plant, but I can't say definitely that there is a gate which swings over the track. In my testimony given on February 28, 1935, I said the Alton constructed a part of this track, beginning in lot 4, as shown on Exhibit 5. That testimony was given in error. Since then I have investigated the matter and found out the facts about which I testified today. The original construction by the Alton Railroad began about the middle of lot 4. The curve started about the middle of lot 5. I don't know who reconstructed the track on a straight line. The alignment of the track at the present time across lots 4 and 5, as shown on Exhibit 1, does not agree with the alignment as shown on Exhibit 5. I think that all of the track in those lots was relocated. My testimony is that the portion of the track beginning in lot 4 was reconstructed and relocated, but I don't know who did it. It might have been practicable to straighten the track out without completely rebuilding it in Lot 4. There is a small portion of it in lot 4 which would not have to be rebuilt. I recall testifying on January 12th that the Alton admitted the ownership of that portion of the track beginning in lot 4 in blocks 7, 8 and 9 to the stub end of the track adjacent to the River. That is the testimony I desired to correct and change. I do not think we own any track in the Gas Company's plant. Due to the fact that there is a turn-out from the track, I think it would be necessary to reconstruct that portion of the track appearing in lot 5. Perhaps 40 feet of it would not have to be removed, but would have to be relocated. In relocating it, the same rails might be used, but I don't think they

were. We did some work in there along about 1910 for the Gas Company, and in the reconstruction of these tracks I think it is quite likely that heavier rail was placed. I don't definitely know that. I only say that the heavier rail might have been used.

686 *Re-direct Examination.*

After rail has been used in a curve it is not practical to use it in a straight track. It is only good for scrap.

*Re-cross Examination.*

There were some straight rails in the tracks from the point of curve up to the River that could have been used in the track in its new location, but I don't
687 know who did it or anything about it. I don't know whether the Railroad did it or the Gas Company.

*Re-direct Examination.*

The track now in dispute is shown on Petitioner's Exhibit 1 in yellow. That track as it now exists, clear out to the end of it, is shown in yellow on Petitioner's Exhibit 1.

The Examiner: Let the records show that the case is being continued until January 27, 1937, for further evidence and oral argument.

689 Consolidated cases 22201 and 24391 called and heard January 27, 1937. Oral argument had before the Commission and case taken under advisement.

690 Report of proceedings had January 27, 1937. on the hearing before the Illinois Commerce Commission in its Dockets 22201 and 24391. Appearances same as before.

691 The Examiner: When the hearings closed on January 14th it was agreed that the records should be left open for further evidence, if desired. Do you have any further evidence?

Mr. Cardy: No further evidence.

Mr. Dines: I have nothing further.

Mr. Towner: Nothing further from me.

The Examiner: The record may show that the case is to be argued today before the Commission. If there is nothing further, the record may be closed. (Which were all the proceedings had in the above entitled causes on the day and date aforesaid.)

693 Order entered by Illinois Commerce Commission on March 24, 1937, in its Dockets 24391 and 22201, Consolidated. Said order is reproduced in full at pages 2 to 34 of this abstract.

719 Copy of order mailed on March 31, 1937, to all parties of record.

720 Copy of notice of appeal to the Circuit Court of Cook County by The Alton Railroad Company from order made by Illinois Commerce Commission on March 24, 1937, in Consolidated cases 24391 and 22201, filed April 13, 1937. Notice shows service upon Secretary of Illinois Commerce Commission on April 13, 1937.

722 Certificate of Secretary of Illinois Commerce Commission, dated May 1, 1937, that foregoing record is a true, correct and complete copy of the record of the Illinois Commerce Commission in its Dockets 24391 and 22201, Consolidated.

724 Appearance of Peoples Gas Light & Coke Company by Cook, Sullivan & Ricks, filed on May 22,

1937, in the Circuit Court of Cook County, in case of *Moulding-Brownell Corp.* v. *The Alton Railroad Co.*, No. 37C-4220.

726 Copy of Notice of Attorneys for The Alton Railroad Company to Attorney General of Illinois, C. C. Cardy, Cook, Sullivan & Ricks and Isham, Lincoln & Beale, filed in the Circuit Court of Cook County, on August 23, 1937, that they desire case of *The Alton Railroad Company* v. *Illinois Commerce Commission, ex rel., Moulding-Brownell Corporation, et al.*, Circuit Court of Cook County, No. 37C-4220, placed upon the trial calendar.

747 Copy of order entered October 1, 1937, by Judge LaBuy, Judge of the Circuit Court of Cook County, assigning case of *The Alton Railroad Company* v. *Illinois Commerce Commission*, General No. 37C-4220, to Judge George W. Bristow.

749 Copy of appearance of Gerson Marks, filed October 4, 1937, in Circuit Court of Cook County, as attorney for Illinois Commerce Commission.

751 Copy of notice filed October 8, 1937, signed by Otto Kerner, Attorney General, and directed to Winston, Strawn & Shaw, Cook, Sullivan & Ricks and Clarence Cardy, that he has filed with Judge Bristow a Memorandum of Authorities in the case of *The Alton Railroad Company* v. *Illinois Commerce Commission*, Circuit Court of Cook County, No. 37C-4220.

753 Copy of motion of The Alton Railroad Company filed October 9, 1937, for new trial or rehearing in case of *The Alton Railroad Company* v. *Illinois Commerce Commission, ex rel*, Circuit Court of Cook County, No. 37C-4220. Motion is as follows:

MOTION.

Now comes the plaintiff, The Alton Railroad Company, a corporation, by Silas H. Strawn and Frank H. Towner, its attorneys, and moves the Court to grant a new trial or a rehearing in the above entitled cause, and as reasons therefor asserts:

1. The Court erred in failing to find that the order of the Illinois Commerce Commission made in its Dockets numbered 22201 and 24391 on March 24, 1937, constituted a taking of plaintiff's property without due process of law, in violation of its rights under Section 2 of Article II of the Constitution of the State of Illinois and the Fourteenth Amendment to the Constitution of the United States.

2. The Court erred in failing to find that the Illinois Commerce Commission, in making its said order, exceeded the powers conferred upon it by statute.

3. The Court erred in failing to find that there was no substantial foundation in the evidence for said order of the Illinois Commerce Commission.

754 4. The Court erred in approving and affirming the said order of the Illinois Commerce Commission.

5. The Court erred in failing to reverse and set aside the said order of the Illinois Commerce Commission.

6. The Court erred in failing to find that the Illinois Commerce Commission did not, in making its said order, make definite and specific findings of fact, and also erred in failing to find that the said Commission failed in said order to make the findings

of fact and to reach the conclusions required by the law and the evidence.

7. The Court erred in holding that the spur track dealt with in the said order of the Illinois Commerce Commission was a part of the railroad operated by plaintiff; and further erred in holding that plaintiff was under the obligation to continue the maintenance and operation of said spur track and the rendering of railroad transportation service by means thereof.

WHEREFORE, Plaintiff prays that the Court may grant a new trial or rehearing herein.

Silas H. Strawn
F. H. Towner
*Attorneys for Plaintiff.*

756 Copy of order entered October 9, 1937, by Judge George W. Bristow in case of *The Alton Railroad Company* v. *Illinois Commerce Commission*, Circuit Court of Cook County, No. 37C-4220, denying motion of plaintiff for new trial or for rehearing. Exception to the order by plaintiff, The Alton Railroad Company.

758 Copy of order entered October 9, 1937, by Judge George W. Bristow in case of *The Alton Railroad Company* v. *Illinois Commerce Commission*, Circuit Court of Cook County, No. 37C-4220, affirming order of Illinois Commerce Commission, dated March 24, 1937, and made by it in cases docketed by said Commission as numbers 24391 and 22201. Exception to the order by plaintiff, The Alton Railroad Company.

760 Copy of notice of appeal by The Alton Railroad Company to the Supreme Court of Illinois from

order entered October 9, 1937, in the Circuit Court of Cook County, in the case of *The Alton Railroad Company, Plaintiff and Appellant*, v. *Illinois Commerce Commission, ex rel., Moulding-Brownell Corporation, et al., Defendants and Appellees*, No. 37C-4220, in which order it was decreed that the order of the Illinois Commerce Commission dated March 24, 1937, in the cases docketed by said Commission as Nos. 24391 and 22201 be affirmed. Notice was filed in Circuit Court of Cook County on October 26, 1937; states prayer of Appellant that said order of the Circuit Court of Cook County may be reversed, and that the order of the Illinois Commerce Commission, affirmed by said Circuit Court of Cook County, may be reversed and set aside; and bears acknowledgement of service of the notice on October 25, 1937, by Otto Kerner, Attorney General of Illinois, as attorney for Illinois Commerce Commission, Cook, Sullivan and Ricks, as attorneys for Peoples Gas Light and Coke Company, C. B. Cardy and W. S. Garman, as attorneys for Moulding-Brownell Corporation, and Heldmaier Stone Company, and Isham, Lincoln & Beale, as attorneys for the Commonwealth Edison Company.

762 Copy of stipulation filed October 26, 1936, in case of *The Alton Railroad Company* v. *Illinois Commerce Commission, ex rel*, No. 37C-4220, in the Circuit Court of Cook County, that on appeal of said case to the Supreme Court of Illinois, the record and order of the Illinois Commerce Commission in the cases docketed by said Commission as numbers 24391 and 22201, as certified to by said Commission, and filed in the Circuit Court of Cook County, may be used instead of a copy of the same. Stipulation is dated October 25, 1937, and is signed by At-

torneys for The Alton Railroad Company, the Illinois Commerce Commission, the Peoples Gas Light & Coke Company, the Moulding-Brownell Corporation and Heldmaier Stone Company, and the Commonwealth Edison Company.

764 Copy of praecipe for record, filed October 26, 1937, by Attorneys for The Alton Railroad Company, in the Circuit Court of Cook County in case of *The Alton Railroad Company* v. *Illinois Commerce Commission, ex rel.*, No. 37C-4220, on appeal to the Supreme Court of Illinois. Shows service on October 25, 1937, on attorneys for Illinois Commerce Commission, Peoples Gas Light and Coke Co., Moulding-Brownell Corporation and Heldmaier Stone Co. and Commonwealth Edison Co.

767 Copy of stipulation filed November 3, 1937, in the Circuit Court of Cook County, in case of *The Alton Railroad Company* v. *Illinois Commerce Commission, ex rel.*, No. 37C-4220, that on appeal of said cause to the Supreme Court of Illinois the original exhibits introduced in evidence on the hearings before the Illinois Commerce Commission in cases docketed by it as numbers 24391 and 22201, as certified to by said Commission and filed in the Circuit Court of Cook County, may be used in the record on appeal instead of copies of the same. Stipulation is dated November 2, 1937, and is signed by attorneys for The Alton Railroad Company, Illinois Commerce Commission, Peoples Gas Light & Coke Co., Moulding-Brownell Corporation and Heldmaier Stone Co., and Commonwealth Edison Co.

768 Certificate of Clerk of Circuit Court of Cook County.

SILAS H. STRAWN,
FRANK H. TOWNER,
*Attorneys for Appellant.*

[fols. 129-130] IN SUPREME COURT OF ILLINOIS

Case No. 24531

THE ALTON RAILROAD COMPANY, Appellant,

vs.

ILLINOIS COMMERCE COMMISSION, ET AL., Appellees

Appeal, Circuit Court of Cook County

ORDER OF SUBMISSION—February 15, 1938

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the Court that Appellant hath filed herein a duly certified copy of the transcript of the record of the proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs and the said appellee having entered motion to affirm said judgment and for costs and procedendo, and said motion being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken and the said cause not having been argued orally by counsel for either side, the cause is hereby submitted for the consideration and judgment of the Court:

Therefore, it is ordered by the Court that this cause be and the same is hereby taken under advisement.

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[fol. 131] IN SUPREME COURT OF ILLINOIS

Docket No. 24531—Agenda 26—February, 1938.

THE ALTON RAILROAD COMPANY, Appellant,

vs.

THE ILLINOIS COMMERCE COMMISSION ex rel. MOULDING-BROWNELL CORPORATION et al., Appellees.

OPINION—Filed April 20, 1938

MR. JUSTICE ORR delivered the opinion of the Court:

The Moulding-Brownell Corporation filed a petition with the Illinois Commerce Commission alleging that it was

served by a switch-track in the city of Chicago connecting with the Chicago and Alton Railroad and that, although it was the duty of the railroad to maintain this track and to pay certain fees imposed by the city of Chicago, the railroad had refused to do so. Petitioners prayed for an order by the commission requiring the railroad to perform its obligations. Subsequently, the Alton Railroad Company filed a petition with the commission alleging that it did not own the track in question and was under no duty to maintain it. This petition asked the commission to rule that it might discontinue service over the track unless the Moulding-Brownell Corporation and the other industries served by it undertook its maintenance. The two cases were consolidated and after several hearings the commission, on March 24, 1937, ordered that the railroad maintain the track in question. This order was affirmed by the Circuit Court of Cook County and the case is here upon direct appeal under section 69 of the Public Utilities act. (Ill. Rev. Stat. 1937, chap. 111 2/3, par. 73.) The commission found that the power of the city of Chicago to impose a charge for maintenance of the track upon the city streets was not before it and hence made no order on that point. Thus we are not called upon to pass upon that issue.

The findings of fact made by the commission, which are not disputed by any of the parties, show that the construction of the switch-track involved in this proceeding, and the five spur-tracks leading from it, was begun some time before 1884; that except for 150 feet adjacent to the intersection of the switch-track and the main line of the railroad, the tracks are located upon property owned by the four industries served, and that the original expense of building these tracks was borne by these companies. In 1904 the petitioning railroad entered into an agreement with the four industries located along this track whereby it agreed to assume the maintenance of the main switch-track, shown by the plat to be approximately 4,000 feet in length. This agreement was performed by the railroad [fol. 132] until March 26, 1936, when its receiver, appointed by a decree of a Federal court, elected not to continue the contract. The spur-tracks leading from the switch-track into the plants have always been maintained by the respective industries and no question as to their maintenance was raised by the petitions in this case. In 1934, an estimated gross revenue of $40,000 was received by the railroad from

the industries served by the switch-track. It appears that the average "running repair" on the track has cost about $1,000 per year, although the total outlay will be greater than that sum during the next few years, due to necessary replacements.

The only issue before us is whether a railroad can be compelled by the Illinois Commerce Commission to maintain a switch-track built by and upon the property of the industries served by the track. We have previously held that, as between the public and a railroad company, a switch-track built for industrial purposes and across public thoroughfares becomes a part of the main line of the railroad system which it joins and is subject to governmental regulation in the public interest even though it was built by private funds and for the most part on private property. (Public Utilities Com. v. Smith, 298 Ill. 151; St. Louis, Springfield and Peoria Railroad v. Commerce Com., 309 id. 621; Von Oven v. Chicago, Burlington and Quincy Railroad Co., 317 id. 334.) Petitioning railroad does not dispute the correctness of these decisions but contends that they merely determine its duty as a public utility to the public at large. It argues that the duty of maintenance is an incident of the ownership of the track and that since it was under no duty to build the track in the first place and since it does not now own it, the burden of maintenance cannot be imposed upon it. This argument is incompatible with our repeated holdings that switch-tracks of this type, once built, become a part of the main line of the railroad, whether built upon private rights-of-way or upon public streets. (Von Oven v. Chicago, Burlington and Quincy Railroad Co. supra, and cases cited.) It overlooks the fact that petitioning railroad uses this track for its own benefit to serve the industries located thereon, and, under the authorities above cited, may use the track, or extensions thereto, conveniently to serve other shippers and the public at large. The public, therefore, has an interest in the proper maintenance of this track quite apart from the interest of the parties to this suit. It was said by the Supreme Court of [fol. 133] Wisconsin in Union Lime Co. v. Railroad Com., 144 Wis. 523, 129 N. W. 605, that over such tracks "the products of the industry find their way into the markets of the world and every consumer is directly interested in the lessened cost of such products resulting from the building and operation thereof. That these products are supplied by a single

owner, or by a limited number of owners, affects the extent and not the nature of its use—the track is none the less a part of the avenue through which the commodities reach the public. * * * Except that it [the railroad] is relieved of the initial cost of right of way and construction, the track stands in the same relation to it that any other portion of its track does. The owner of the industry obtains no interest in or control over it beyond that of being served by it equally with any one else who may desire to use it."

Section 50 of the Public Utilities act provides: "Whenever the commission, after a hearing had upon its own motion, or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility * * * ought resonably to be made * * * to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made. * * * in the manner and within the time specified in said order." This section is broad enough to impose a duty upon a railroad to maintain property which it uses for its own profit as well as that to which it has title, and, under the act, the commission has ample authority to enforce it.

Petitioning railroad contends, however, that because other industries in Chicago provide and maintain connecting spur-tracks at their own expense, the order of the commission in this case will result in discrimination. It appears, however, that such connections are similar in nature to the five spur-tracks leading from the switch-track in question here. These connections have been, and apparently will continue to be, maintained by the individual companies to whose premises they lead. Hence no discrimination is apparent.

The order of the Illinois Commerce Commission was within its statutory power and does not violate any provision of the State or Federal constitutions. The judgment of the circuit court of Cook county, sustaining the order of the commission, is affirmed.

Judgment affirmed.

[fols. 134-136] In Supreme Court of Illinois

The Alton Railroad Company, Appellant,

vs.

Illinois Commerce Commission ex Rel. Moulding-Brownell Corporation et al., Appellees

Appeal From Circuit Court Cook

37C4220

Judgment—April 20, 1938

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error;

Therefore, it is considered by the Court that the Judgment of the Circuit Court aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said Appellees recover of and from the said Appellant costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Adam F. Bloch, Clerk of the Supreme Court of the State of Illinois and Keeper of records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Testimony Whereof, I have set my hand and affixed the Seal of the said Supreme Court, in Springfield, in said State, this 22nd day of June, in the year of our Lord one thousand nine hundred and Thirty-eight.

Adam F. Bloch, Clerk of the Supreme Court. (Seal of the Supreme Court, State of Illinois.)

[fols. 137-138] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER DENYING REHEARING—June 15, 1938

Now on this day the Court having duly considered the petition for rehearing filed herein and the Court being now advised in the premises doth overrule the prayer of the petition and denies a rehearing of this cause.

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[fol. 139] IN SUPREME COURT OF ILLINOIS

[Title omitted]

PETITION FOR APPEAL—Filed July 1, 1938

To the Honorable Elwyn R. Shaw, Chief Justice of the Supreme Court of Illinois.

Now comes The Alton Railroad Company, Petitioner herein, by its attorneys, and respectfully shows:

(1) That Petitioner is the Appellant in the above entitled cause.

(2) That on April 20, 1938, on the appeal of Petitioner, the Supreme Court of Illinois affirmed a judgment of the Circuit Court of Cook County, entered on October 9, 1937, affirming an order of the Illinois Commerce Commission, dated March 24, 1937, and made by it in cases docketed by said Commission as Nos. 24391 and 22201.

(3) That thereafter Petitioner applied for a rehearing in the Supreme Court of Illinois, which petition was denied by said Court on January 15, 1938.

[fol. 140] (4) That in said cause there is drawn in question the validity of a statute of the State of Illinois, on the ground of its being repugnant to the Constitution and Laws of the United States, and the decision is in favor of its validity; in that the said order of the said Commission, so upheld by the decision of the Supreme Court of Illinois, deprives Petitioner of its property without due process of law in violation of its rights under the Fourteenth Amendment to the Constitution of the United States.

Wherefore, Petitioner prays that it be allowed an appeal from said Supreme Court of the State of Illinois, which is the highest court of said State, to the Supreme Court of the United States, in order that the decision of the Supreme Court of the State of Illinois may be examined and reversed; that a transcript of the record, proceedings and papers, on which said final order or judgment of the Supreme Court of the State of Illinois was made and entered in said case, duly authenticated by the Clerk of the Supreme Court of the State of Illinois, may be sent to the Supreme Court of the United States, as provided by law, and that a proper order relating to the security to be required of it be made.

The errors, upon which Petitioner claims to be entitled to an appeal, are those above indicated and are more fully set out in the Assignment of Errors filed herewith.

The Alton Railroad Company, a Corporation, by
Silas H. Strawn, Frank H. Towner, Its Attorneys.

Dated July 1st, 1938.

[fols. 141-142] [File endorsement omitted.]

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[fol. 143] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 1, 1938

The petition of The Alton Railroad Company for an appeal in the above cause to the Supreme Court of the United States from the Supreme Court of the State of Illinois, and the Assignment of Errors filed therewith, and the record of said cause having been considered,

It is Ordered that an appeal by said Petitioner to the Supreme Court of the United States from the Supreme Court of the State of Illinois, be and the same is allowed as prayed in said petition, and that the Clerk of the Supreme Court of the State of Illinois shall prepare and certify a transcript of the record, proceedings and papers in the above cause, and transmit the same to the Supreme Court of the United States within thirty (30) days from the date hereof.

It is Further Ordered that said The Alton Railroad Company shall give good and sufficient security in the sum of

Two Hundred and Fifty Dollars ($250.00) that it shall [fol. 144] prosecute said appeal to effect and that if it shall fail to make its plea good, it shall answer all costs.

Elwyn R. Shaw, Chief Justice of the Supreme Court of Illinois.

Dated July 1st, 1938.

[fols. 145-146] [File endorsement omitted.]

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[fol. 147] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 1, 1938

Now comes The Alton Railroad Company and presents with its petition for appeal herein, this assignment of errors, and says that in the record and proceedings in the above entitled cause, and the order and judgment made and entered therein on April 20, 1938, by the Supreme Court of the State of Illinois, there is error in the particulars hereinafter set forth.

The Supreme Court of the State of Illinois erred in making and entering said order and judgment in the following respects:

(1) It erred in holding that the order of the Illinois Commerce Commission, made in its Dockets Nos. 22201 and 24391, on March 24, 1937, did not constitute a taking of petitioner's property without due process of law, in violation of petitioner's rights under the Fourteenth Amendment to the Constitution of the United States.

(2) It erred in failing to hold that said order of the Illinois Commerce Commission constituted a taking of petitioner's property without due process of law, in violation [fol. 148] of petitioner's rights under the Fourteenth Amendment to the Constitution of the United States.

(3) It erred in approving the said order of the Illinois Commerce Commission.

(4) It erred in failing to reverse and set aside the said order of the Illinois Commerce Commission.

(5) It erred in requiring petitioner to continue the maintenance and operation of the switch track dealt with in said order of the Illinois Commerce Commission, and the rendering of railroad transportation by means thereof to industries served thereby.

(6) It erred in holding that petitioner should not be permitted to discontinue the rendering of railroad transportation over the switch track dealt with in said order of the Illinois Commerce Commission, in the absence of the payment by the industries served thereby of all charges for the maintenance of said switch track and of all fees charged by the City of Chicago for maintaining it in its present location.

(7) It erred in holding that the continued maintenance of said switch track by petitioner, and the continued payment of ordinance fees to the City of Chicago by petitioner, would not produce an unlawful discrimination.

(8) It erred in basing the conclusion reached by it upon Section 50 of the Public Utilities Act of Illinois.

(9) It erred in affirming the judgment of the Circuit Court of Cook County, sustaining the order of the Commission.

(10) It erred in failing to reverse the said judgment of the Circuit Court of Cook County, and in failing to reverse [fol. 149] and set aside the said order of the Illinois Commerce Commission.

Wherefore, said The Alton Railroad Company prays that the said order or judgment, made and entered herein on April 20, 1938, be reversed, and that the Supreme Court of Illinois be directed to enter an order or judgment reversing the said judgment of the Circuit Court of Cook County, and reversing and setting aside the said order of said Illinois Commerce Commission.

The Alton Railroad Company, by Silas H. Strawn,
Frank H. Towner, Its Attorneys.

[fols. 150-150a] [File endorsement omitted.]

[fol. 151] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed July 12, 1938

It is Hereby Stipulated and Agreed by and between the parties hereto, by their attorneys, pursuant to paragraph 2 of Rule 10 of the Rules of the Supreme Court of the United States, that the transcript of record to be prepared by the Clerk of the Supreme Court of the State of Illinois, for transmission to the Supreme Court of the United States on the appeal of The Alton Railroad Company in the above entitled cause from the Supreme Court of the State of Illinois to the Supreme Court of the United States, shall include the following:

(1) The printed abstract of record filed in said cause in the Supreme Court of the State of Illinois;

(2) A copy of the order of submission of said cause in said Court;

(3) A copy of the opinion of said Court in said cause, together with the order of said Court thereon;

(4) A copy of the petition for rehearing in said cause, filed in said Court by appellant, The Alton Railroad Company;

[fol. 152] (5) A copy of the order of said Court denying said petition for rehearing;

(6) A copy of the petition of The Alton Railroad Company for appeal from said Court to the Supreme Court of the United States;

(7) A copy of the order, signed by the Chief Justice of the Supreme Court of the State of Illinois, allowing an appeal in said cause from the Supreme Court of the State of Illinois to the Supreme Court of the United States;

(8) A copy of the assignment of errors on said appeal filed in the Supreme Court of the State of Illinois by The Alton Railroad Company;

(9) A copy of the statement, filed in said Court by The Alton Railroad Company, of the basis upon which the Supreme Court of the United States has jurisdiction upon appeal to review the judgment of the Supreme Court of the State of Illinois in said cause;

(10) Copies of any statement filed by any appellee making against the jurisdiction of the Supreme Court of the

United States asserted by The Alton Railroad Company, together with copies of any motions to dismiss said appeal or affirm the final order of the Supreme Court of the State of Illinois therein, and of proof of service thereof upon counsel for The Alton Railroad Company;

(11) A copy of notice to the attorneys for Illinois Commerce Commission, Peoples Gas Light & Coke Company, Moulding-Brownell Corporation, E. Heldmaier, Inc. and Commonwealth Edison Company, serving upon each of them copies of the petition for appeal in said cause, the order granting said appeal, the assignment of errors filed with said petition for appeal, and the statement of the basis upon which the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment entered in said cause by the Supreme Court of the State of [fol. 153] Illinois; and directing the attention of each of them to the provisions of paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States;

(12) A copy of the citation on said appeal in said cause, with acknowledgment of the service thereof;

(13) A copy of the appeal bond on said appeal, filed in the Supreme Court of the State of Illinois by The Alton Railroad Company;

(14) A copy of this stipulation with respect to the transcript of record on said appeal.

It is Further Stipulated and Agreed by and between the parties hereto, by their respective attorneys, that the transcript of record containing the foregoing documents, will contain a statement of all the evidence and proceedings in said cause necessary to a determination of said cause in the Supreme Court of the United States on said appeal.

Silas H. Strawn, Frank H. Towner, Attorneys for The Alton Railroad Company, Appellant. Otto Kerner, Attorney General of Illinois, for Illinois Commerce Commission, Appellee. Cooke, Sullivan & Ricks, Attorneys for Peoples Gas Light & Coke Company, Appellee. Clarence B. Cardy, Attorney for Moulding-Brownell Corporation, and E. Heldmaier, Inc., Appellees. Isham & Lincoln, Beale, Attorneys for Commonwealth Edison Company, Appellee.

Dated July 11th, 1938.

[fol. 154] [File endorsement omitted.]

[fol. 155] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 156] In Supreme Court of the United States

Statement of Points to be Relied upon by Appellant and Designation of Parts of Record to be Printed—Filed August 3, 1938

Now comes The Alton Railroad Company, appellant in the above entitled cause, by Silas H. Strawn and Frank H. Towner, its attorneys, and files this statement of the points upon which appellant intends to rely, and of the parts of the record which it thinks necessary for the consideration thereof, together with proof of service of the same upon appellees.

Statement of Points to be Relied upon by Appellant

(1) The Supreme Court of Illinois erred in holding that the order of the Illinois Commerce Commission made in said Commission's Dockets Nos. 22201 and 24391, on March 24, 1937, did not constitute a taking of appellant's property without due process of law, in violation of appellant's rights under the Fourteenth Amendment to the Constitution of the United States.

(2) The Supreme Court of Illinois erred in failing to hold that said order of the Illinois Commerce Commission constitutes the taking of appellant's property without due process of law, in violation of appellant's rights under the Fourteenth Amendment to the Constitution of the United States.

(3) The Supreme Court of Illinois erred in approving the said order of the Illinois Commerce Commission and in [fol. 157] failing to reverse and set aside said order.

(4) The Supreme Court of Illinois erred in requiring appellant to continue the maintenance and operation of the switch track dealt with in said order of the Illinois Commerce Commission, and the rendering of railroad transportation by means thereof to the industries served thereby, and erred in holding that appellant should not be permitted to discontinue the rendering of railroad transportation over said switch track in the absence of the payment by the in-

dustries served thereby of all charges for the maintenance of said switch track, and of all fees charged by the City of Chicago for maintaining it in its present location.

(5) The Supreme Court of Illinois erred in holding that the continued maintenance of said switch track by appellant, and the continued payment of ordinance fees to the City of Chicago by appellant, would not produce an unlawful discrimination.

(6) The Supreme Court of Illinois erred in basing the conclusion reached by it upon Section 50 of the Public Utilities Act of Illinois.

(7) The Supreme Court of Illinois erred in affirming the order of the Circuit Court of Cook County sustaining the said order of said Commission, and erred in failing to reverse the said judgment of the Circuit Court of Cook County and in failing to reverse and set aside the said order of the Illinois Commerce Commission.

## Designation of Parts of Record to be Printed

Appellant hereby designates for printing the entire transcript of record filed herein, which it thinks necessary for consideration in determining the appeal herein, excepting, however, the following parts of said transcript of record:

(1) The petition for rehearing filed by appellant in the [fol. 158] Supreme Court of Illinois.

(2) The citation on appeal from the Supreme Court of Illinois to the Supreme Court of the United States, and the acknowledgment of the service thereof.

(3) The appeal bond filed in the Supreme Court of Illinois on the appeal from said court to the Supreme Court of the United States.

(4) The following parts of the abstract of record which was filed in the Supreme Court of Illinois, and is included in the transcript of record filed in the Supreme Court of the United States:

(a) Those parts of said abstract of record appearing on page 35 thereof, identified as appearing at pages 52, 53 and 55 of the original record filed in the Supreme Court of Illinois, and being the last seven lines on said page 35 of said abstract.

(b) The parts of said abstract of record appearing on page 36 thereof, identified as appearing at pages 56, 57, 58, 59, 61, 62, 63 and 65 of the original record filed in the Supreme Court of Illinois, and being the first eighteen lines on said page 36 of said abstract.

(c) Those parts of said abstract of record appearing on page 38 thereof, identified as appearing at pages 85, 89, 90 and 92 of the original record filed in the Supreme Court of Illinois, and being the last nine lines of said page 38 of said abstract.

(d) Those parts of said abstract of record appearing on page 39 thereof, identified as appearing at pages 93, 94, 95, [fol. 159] 100, 106, 109, 112, 115 and 119 of the original record filed in the Supreme Court of Illinois, and being the first twenty-four lines of said page 39 of said abstract.

(e) That part of said abstract of record appearing on page 51 thereof and identified as appearing at page 202 of the original record filed in the Supreme Court of Illinois.

(f) That part of said abstract of record appearing on page 52 thereof and identified as appearing at page 212 of the original record filed in the Supreme Court of Illinois.

(g) Those parts of said abstract of record appearing on page 96 thereof, identified as appearing at pages 490, 492, 494 and 508 of the original record filed in the Supreme Court of Illinois, and being the last thirteen lines of said page 96 of said abstract.

(h) That part of said abstract of record appearing on page 97 thereof and identified as appearing at page 513 of the original record filed in the Supreme Court of Illinois.

(i) Those parts of said abstract of record appearing on page 109 thereof and identified as appearing at pages 597 and 599 of the original record filed in the Supreme Court of Illinois.

(j) That part of said abstract of record appearing at page 118 thereof and identified as appearing at page 665 of the original record filed in the Supreme Court of Illinois.

Silas H. Strawn, Frank H. Towner, Attorneys for Appellant.

[fols. 160-167] Service of the foregoing statement of points to be relied upon by appellant on the appeal herein, and designation of parts of the record to be printed, and receipt

of a copy thereof are hereby acknowledged this 1st day of August, 1938.

Otto Kerner, Attorney General of Illinois, for Illinois Commerce Commission, Appellee. Cooke, Sullivan and Ricks, Attorneys for Peoples Gas Light & Coke Company, Appellee. C. B. Cardy, Attorney for Moulding-Brownell Corporation, and E. Heldmaier, Inc., Appellees. Isham, Lincoln & Beale, Attorneys for Commonwealth Edison Company, Appellee.

[fol. 168] [File endorsement omitted.]

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Endorsed on cover: File No. 42,716. Illinois Supreme Court. Term No. 231. The Alton Railroad Company, Appellant, vs. Illinois Commerce Commission, Moulding-Brownell Corporation, and E. Heldmaier, Inc., et al. Filed July 29, 1938. Term No. 231, O. T., 1938.